
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Walter Lynwood

Case Number: 04-02207

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Walter Lynwood, hereinafter referred to as "Claimant": William Jemison Mims, Jr., Esq., Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A., Pensacola, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), hereinafter referred to as "Respondent": Catherine W. Main, Esq., Maynard, Cooper & Gale, Montgomery, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: March 30, 2004.

Claimant signed the Uniform Submission Agreement: March 29, 2004.

Statement of Answer filed by Respondent on or about: June 14, 2004.

Respondent signed the Uniform Submission Agreement: June 14, 2004.

Motion to Dismiss and Motion to Strike filed by Respondent on or about: June 14, 2004.

Response to Motion to Dismiss and Motion to Strike filed by Claimant on or about: September 30, 2004.

Motion for Evidentiary Final Hearing filed by Respondent on or about: July 2, 2004.

Response to Motion for Evidentiary Final Hearing filed by Claimant on or about: August 5, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) fraud; 3) negligent misrepresentation; 4) negligence; 5) violation of Blue Sky Laws; and, 6) breach of contract. The causes of action relate to the purchase of the Merrill Lynch Focus Twenty Fund in Claimant's account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$16,900.00, punitive damages, interest, costs, attorney's fees and such other relief as this Panel deemed appropriate.

Respondent requested that the Statement of Claim be dismissed in its entirety and that the costs of this proceeding be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 22, 2004, the sole arbitrator appointed to this matter issued an Order that denied Respondent's Motion for Final Evidentiary Hearing. The parties were ordered to file any additional information or documentation that they would want the Arbitrator to consider on or before October 22, 2004. Upon request by the parties the deadline for submissions was extended until November 30, 2004. Pursuant to this Order, on November 30, 2004, Respondent filed a Hearing Submission.

On or about March 8, 2005, the Arbitrator, within her Order for final determination of this matter, denied Respondent's Motion to Dismiss and Motion to Strike.

AWARD

After considering the pleadings, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is found not liable and all Claimant's claims are dismissed in their entirety.

Any and all claims for relief not specifically addressed herein, including Claimant's requests for punitive damages and attorney's fees, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$425.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge = \$425.00

Adjournment Fees

No requests for adjournments were filed in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were assessed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

No hearings were held for this matter.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 425.00
<u>Total Fees</u>	= \$ 425.00
<u>Less payments</u>	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

<u>Member Fees</u>	= \$ 425.00
<u>Total Fees</u>	= \$ 425.00
<u>Less payments</u>	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATOR

Frances D. Sheehy, Esq.

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Public Arbitrator, Presiding Chairperson

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Arbitrators' Signature

/s/

Frances D. Sheehy, Esq.

Public Arbitrator, Presiding Chairperson

03/08/05

Signature Date

03/09/05

Date of Service (For NASD Dispute Resolution office use only)

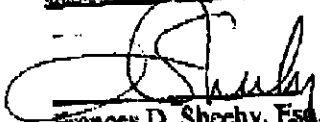
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Arbitrators' Signature



Frances D. Sheehy, Esq.
Public Arbitrator, Presiding Chairperson

3-8-05
Signature Date

Date of Service (For NASD Dispute Resolution office use only)