

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 04-02523

Frank Wynne, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

ATTORNEYS:

For Claimant, Frank Wynne, ("Claimant"), appeared Eddie Easa Farah, Esq., of the firm Farah, Farah & Abbot, P.A., Jacksonville, FL.

For Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent"), appeared Alan M. Wolper, Esq. of the firm Sutherland Asbill & Brennan, LLP, Atlanta, GA.

NATURE OF DISPUTE: Customer vs. Member.

DATE FILED: April 7, 2004.

CASE SUMMARY: Claimant alleged that Respondent breached its fiduciary duty to generate analyst reports that accurately reflect its true opinions, disclose all inherent conflicts of interest, and provide accurate financial advice. Claimant further alleged that Respondent intentionally and/or recklessly misrepresented and/or omitted material facts that were necessary to make informed investment decisions in the Claimant's portfolio. Additionally, Claimant alleged that Respondent participated in and/or aided in the publication of untrue statements of material fact or omission of material facts to the Claimant. Claimant additionally alleged that Respondent's actions were in violation of Blue Sky Laws. Claimant also alleged that Respondent was in breach of its contract to engage in fair dealing with its clients. Claimant maintained that as a result of Respondent's actions, his account suffered financial losses.

ARBITRATOR'S SUMMARY: (See Exhibit A)

Claim Data

Claim: \$22,573.00
Punitive: Unspecified
Interest: Unspecified
Attorney Fees: Unspecified
Filing Fees: Unspecified
Other: Unspecified

Award Data

Award: \$.00
Punitive: \$.00
Interest: \$.00
Attorney Fees: \$.00
Filing Fees: \$.00
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of Claimant are dismissed in their entirety. 2) All requests for punitive damages are denied. 3) All requests for attorney fees are denied. 4) All requests for interest are denied. 5) All other relief requests are denied. 6) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent Merrill Lynch, Pierce, Fenner & Smith Inc., has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

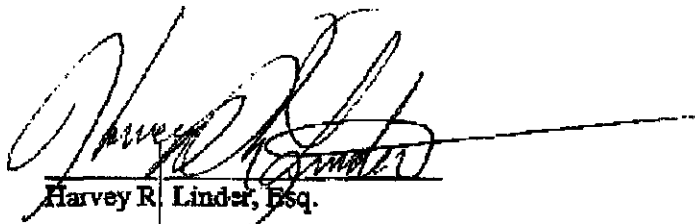
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ARBITRATOR

Harvey R. Linder, Esq. - Sole Public Arbitrator

AFFIRMATION

I, Harvey R. Linder, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Harvey R. Linder, Esq.

12/30/04
Signature Date

January 4, 2005
Date of Service (For NASD-DR office use only)

NASD DISPUTE RESOLUTION

Frank Wynne

Claimant,

v.

Merrill Lynch Pierce Fenner & Smith Inc.

Respondent.

NASD-DR Arbitration
Number 04-02523


On April 20, 2004, Claimant filed a Statement of Claim in the above-captioned matter. The Statement of Claim alleges six (6) separate theories of liability: Breach of Fiduciary Duty, Fraud, Negligent Misrepresentation, Negligence, Violation of Blue Sky Laws, and Breach of Contract. Claimant demands: compensatory damages in the amount of \$22,573.00 based upon losses sustained in two securities, allegedly due to the causes of action set forth above; interest; costs; attorney fees; and "such other damages deemed appropriate".

On September 19, 2004, Respondent filed its Answer. Respondent avers that: Claimant's Fraud claims are barred by the applicable Statute of Limitations; Claimant has failed to state a cause of action for Fraud; Claimant cannot show that Respondent breached any Fiduciary Duty; Claimant cannot demonstrate the elements of Negligence, and that the Negligence claim is also barred by the economic loss rule; and, Claimant ratified all trades.

After due consideration and deliberation, the Arbitrator hereby makes the following final and binding rulings in this matter:

1. All claims set forth in the Claimant's Statement of Claim are denied.
2. Each party shall be responsible for their own costs and attorney fees associated with this Arbitration.

It is hereby so ordered.


Harvey R. Einder
Arbitrator

Date: 12/23/04