

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

John F. Kennedy and Mary E. Kennedy, JTWROS
John F. Kennedy, IRA

Case Number: 04-02659

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Charlotte, NC

Nature of the Dispute: Customers vs. Member.

REPRESENTATION OF PARTIES

Claimants, John F. Kennedy and Mary E. Kennedy, JTWROS and John F. Kennedy, IRA, hereinafter collectively referred to as "Claimants", were represented by Leslie Trager, Esq., Morley and Trager, New York, New York.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent", was represented by S. Lawrence Polk, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on April 12, 2004.

Claimants signed the Uniform Submission Agreement on March 15, 2004.

Statement of Answer filed by Respondent on July 15, 2004.

A representative of Respondent executed the Uniform Submission Agreement on July 19, 2004.

CASE SUMMARY

In their Statement of Claim, Claimants asserted the following causes of action, among others: breach of fiduciary duty, suitability, and failure to supervise. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in its Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: contributory negligence; failure to state a claim upon which relief may be granted; Claimants' claims are barred by the doctrines of laches, unclean hands and estoppel; waiver; authorization; ratification; failure to use requisite care; assumption of the risk; failure to mitigate damages; and Claimants' claims are barred by the statute of limitations.

RELIEF REQUESTED

Claimants in the Statement of Claim requested:

Compensatory Damages	\$ 569,467.00
Punitive Damages	amount unspecified
Attorneys' Fees	amount unspecified
Interest	amount unspecified
Other Costs	amount unspecified

Respondent requested that the Arbitration Panel (the "Panel") reject Claimants' Statement of Claim in its entirety and that the forum fees be borne by Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable to and shall pay to Claimants the sum of \$50,000.00 in compensatory damages;
2. The parties shall bear their respective costs, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

FEES

Pursuant to 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	= \$ 375.00
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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, Respondent is a party.

Member surcharge	= \$ 2,250.00
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Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

Forum Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator @ \$ 450.00	
Pre-hearing conference: January 17, 2005 1 session	= \$ 450.00
One (1) Pre-hearing session with Panel @ \$ 1,200.00	= \$ 1,200.00
Pre-hearing conference: November 16, 2004 1 session	
Nine (9) Hearing sessions @ \$ 1,200.00	= \$ 10,800.00
Hearing Dates: September 13, 2005 2 sessions	
September 14, 2005 3 sessions	
September 15, 2005 2 sessions	
September 16, 2005 2 sessions	
Total Forum Fees	= \$ 12,450.00

The Panel has assessed \$ 12,450.00 of the forum fees to Respondent.

Fee Summary

1. Claimants are jointly and severally assessed and shall pay:	
Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 1,575.00
Refund owed Claimants	= \$ 1,200.00
2. Respondent is assessed and shall pay:	
Member Fees	= \$ 7,000.00
Forum Fees	= \$ 12,450.00
Total Fees	= \$ 19,450.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 12,450.00

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

ARBITRATION PANEL

John A. Baynes, III

William F. Julavits, Esq.

Shelly-Ann Natasha Eweka

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



John A. Baynes, III
Public Arbitrator, Presiding Chairperson

9/19/05
Signature Date

William F. Julavits, Esq.
Public Arbitrator, Panelist

Signature Date

Shelly-Arn Natasha Eweka
Non-Public Arbitrator, Panelist

Signature Date

September 20, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

John A. Baynes, III
Public Arbitrator, Presiding Chairperson

Signature Date

William F. Julavits
William F. Julavits, Esq.
Public Arbitrator, Panelist

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Shelly-Ann Natasha Eweka
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