

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants
Shirley Rucker and April Dixon

Case Number: 04-03229

Name of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.
and Edward D. Jones & Co.

Hearing Site: St. Louis, Missouri

NATURE OF DISPUTE

Customers vs. Member Firms

REPRESENTATION OF PARTIES

Shirley Rucker ("Rucker") and April Dixon ("Dixon"), hereinafter referred to as Claimants, appeared *pro se* in this matter.

David E. Bamberger, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc., located in New York, New York, represented the Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), hereinafter referred to as "Respondent Merrill Lynch."

David Simmons, Esq. of Greensfelder, Hemker & Gale, P.C., located in St. Louis, Missouri, represented Edward D. Jones & Co. ("Edward Jones"), hereinafter referred to as "Respondent Edward Jones."

CASE INFORMATION

Statement of Claim filed on April 20, 2004. Claimant Rucker signed the Uniform Submission Agreement on August 2, 2004. Claimant Dixon did not submit a signed Uniform Submission Agreement.

Statement of Answer and Affirmative Defenses; Motion to Sever; Motion to Administer the Claims Under Rules Governing Simplified Arbitrations; Motion to Dismiss against Merrill Lynch as Ineligible Under NASD Code 10304; and Motion to Dismiss against Merrill Lynch on Merits and/or as Barred by Applicable Statutes of Limitations filed by Respondent Merrill Lynch on September 29, 2004. Merrill Lynch signed the Uniform Submission Agreement on September 28, 2004.

Statement of Answer and Affirmative Defenses and Motion to Dismiss for Failure to Join and Indispensable Party filed by Respondent Edward Jones on October 1, 2004. Edward Jones signed the Uniform Submission Agreement on August 17, 2004.

A Motion to Dismiss for Failure to Provide Discovery Pursuant to the Chairperson's Order filed by Edward Jones on February 25, 2005. Claimants filed a response on March 10, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: suitability. The causes of action relate to a Kemper U.S. Mortgage Fund ("Kemper Fund") held with Merrill Lynch, which was then transferred to Edward Jones and liquidated to establish a new investment in Putnam Fund for Growth and Income. Claimants asserted that these investments were unsuitable to Claimant's needs and objectives.

Unless specifically admitted in its Answer, Respondent Merrill Lynch denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The claim fails to state a cause of action upon which relief may be granted.
2. Respondent did not guarantee Claimants any specific level of return on her investment and indeed put Claimants on notice that the contemplated investment strategy could produce a loss of principal.
3. Claimants did not suffer any out-of-pocket losses and any other claims for supposed damages are too speculative to be compensated.
4. Any losses sustained by the Claimants resulted solely from the vagaries and volatility of the securities market over which Respondent had no control, and not from any alleged wrongdoing on the part of Respondent.
5. To the extent that Claimants sustained damages, such damages were caused, in whole or in part, by the culpable conduct, fault assumption of risk, negligence, intentional acts and/or other action or inaction on the part of the Claimants and are, therefore, not recoverable from the Respondent.
6. Respondent never recommended an unsuitable investment for the Claimants' accounts.
7. The risks of the only investments complained of were fully disclosed in the prospectuses relating to the Kemper U.S. Mortgage Fund.
8. To the extent that Claimants sustained damages, such damages were caused, in whole or in part, by the culpable conduct, fault, assumption or risk, negligence, intentional acts and/or other action or inaction on the part of third parties over which the Respondent had no authority or control and are, therefore, not recoverable from the Respondent.
9. All actions by Respondent were fully consistent with laws, rules, regulations and standards of conduct applicable in the circumstances.
10. Any and all duties owed to Claimants were fully and faithfully performed.
11. As a matter of law, Respondent had no fiduciary duties to Claimants, because the account in question was non-discretionary and Claimants retained and exercised complete control over the account.
12. Claimants failed to mitigate her alleged damages, if any.
13. Merrill Lynch had in place adequate supervisory procedures, which it reasonably and diligently implemented and followed at all relevant times.
14. As a matter of fact and law, Claimants are not entitled to an award of attorney's fees, arbitral costs, punitive damages and any other relief.
15. The applicable statutes of limitations and/or doctrine of laches bar Claimants' claims, in whole or in part.
16. If it made any actionable misrepresentations of fact (and it did not), Respondent did not know such representations were false when made and exercised reasonable care in determining their accuracy.

17. The doctrines of ratification, waiver, estoppel and/or unclean hands preclude Claimants from having any recovery herein.
18. Claimants' claims are barred by documentary evidence.

Unless specifically admitted in its Answer, Respondent Edward Jones denied the allegations made in the Statement of Claim and asserted the following defenses:

1. All claims are barred by the statute of limitations.
2. Claimants authorized and instructed Gregory Shoemaker ("Mr. Shoemaker"), broker for Edward Jones, to enter into all of the transactions at issue and therefore, claims based on such transactions should be dismissed.
3. The claims asserted in the Statement of Claim are barred by the doctrines of laches, waiver and release.
4. Claimants ratified all transactions that took place in her account and therefore, Claimants are barred from recovering any alleged losses resulting from such transactions.
5. To the extent that Claimants suffered any damages, they are the product of the negligent conduct of Claimants such that some, or all, of their recovery is barred by those contributory or comparative negligence acts.
6. Claimants failed to mitigate her alleged damages and therefore, is barred from recovering any damages to the extent that such damages could have been prevented had she fulfilled her duty to mitigate.

RELIEF REQUESTED

Claimants requested \$11,103.00 in compensatory damages from Merrill Lynch; and \$15,000.00 in compensatory damages from Edward Jones.

Respondent Merrill Lynch requested dismissal of all claims against Merrill Lynch in their entirety.

Respondent Edward Jones requested dismissal of all claims against Edward Jones in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

In an Order dated January 13, 2005, the Arbitrator dismissed all claims against Merrill Lynch pursuant to Rule 10304 of the NASD Code after finding that Claimants' Kemper Fund dated in 1995 was effectively closed at Merrill Lynch once it transferred to Edward Jones.

A pre-hearing conference was held on February 17, 2005 to hear arguments on Edward Jones' Motion to Dismiss for Failure to Join An Indispensable Party. The Arbitrator ordered Claimant to amend her Statement of Claim to include her daughter, April Dixon, as co-owner of the accounts at issue and a party to this proceeding.

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

1. Any and all claims asserted by Claimants, Shirley Rucker and April Dixon, are denied.
2. All claims against Edward D. Jones & Co., Inc. are dismissed with prejudice.
3. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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	= \$ 150.00
(Waived by NASD)	

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch and Edward Jones are parties to this proceeding.

Merrill Lynch:

Member surcharge	= \$ 425.00
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Edward Jones:

Member surcharge	= \$ 425.00
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Forum Fees and Assessments

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

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
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Pre-hearing conferences:	January 12, 2005	1 session
	February 17, 2005	1 session

Two (2) Hearing sessions @ \$450.00	= \$ 900.00
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Hearing Date	May 25, 2005	2 sessions
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Total Forum Fees	= \$1,800.00
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The Arbitrator assessed 100% of the total forum fees in the amount of \$1,800.00 solely to Claimants, Shirley Rucker and April Dixon.

EEE SUMMARY

1. Claimants, Shirley Rucker and April Dixon, are solely liable for:

Forum Fees	= \$1,800.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,800.00

2. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for:

Member Fees	= \$ 425.00
<u>Less payments</u>	<u>= \$1,350.00</u>
Refund Due NASD Dispute Resolution	= \$ 925.00

3. Respondent, Edward D. Jones & Co., is solely liable for:

Member Fees	= \$ 425.00
<u>Less payments</u>	<u>= \$2,350.00</u>
Refund Due NASD Dispute Resolution	= \$1,925.00

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

ARBITRATION PANEL

Richard L. Puhl

- Public Arbitrator, Presiding Chairperson

Concurring Arbitrators' Signature

/s/ Richard L. Puhl

Richard L. Puhl

Public Arbitrator, Presiding Chairperson

6/2/05

Signature Date

6/2/05

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

NASD Dispute Resolution
Arbitration No. 04-03220
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SEE SUMMARY

1. Claimants, Shirley Rucker and April Dixon, are solely liable for:

Forum Fees	= \$1,800.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,800.00

2. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for:

Member Fees	= \$ 425.00
Less payments	= \$1,350.00
Refund Due NASD Dispute Resolution	= \$ 925.00

3. Respondent, Edward D. Jones & Co., is solely liable for:

Member Fees	= \$ 425.00
Less payments	= \$2,360.00
Refund Due NASD Dispute Resolution	= \$1,925.00

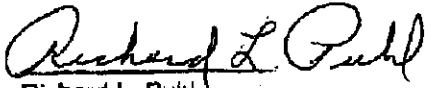
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