

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-03409

Ora Robertson, IRA

Names of the Respondents

Hearing Site: Charlotte, North Carolina

Merrill Lynch, Pierce, Fenner & Smith, Inc.
John Thomas Holland

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimant, Ora Robertson, IRA, hereinafter referred to as "Claimant", was represented by Shawn P. George, Esq., George & Lorensen, PLLC, Charleston, West Virginia.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and John Thomas Holland ("Holland"), hereinafter collectively referred to as "Respondents", were represented by Carranza Pryor, Esq. and Brian Hale, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on May 5, 2004.

Claimant signed the Uniform Submission Agreement on May 5, 2004.

Statement of Answer filed by Respondents on June 30, 2004.

Respondent Holland signed the Uniform Submission Agreement on June 28, 2004.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on May 17, 2004.

Claimant filed her Motion to Move Hearing Location on August 15, 2005.

Respondents filed their Response to the Motion to Move Hearing Location on August 18, 2005.

CASE SUMMARY

Claimant asserted the following causes of action, among others: negligence, breach of contract, common law fraud and violation of W.Va. Code §§ 32-4-410 and 46A-6-101 *et. seq.*, and breach of fiduciary duty. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, waiver, laches, unclean hands, estoppel, comparative and/or

contributory negligence, Respondents acted in good faith, ratification, assumption of risk, failure to mitigate, Respondent Merrill Lynch maintained a reasonable system of supervision, and economic loss rule.

RELIEF REQUESTED

Claimant in her Statement of Claim requested compensatory damages in an amount in excess of \$250,000.00, punitive damages, interest, attorneys' fees, forum fees, and other costs.

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed, that Respondent Holland's records with the NASD Central Registration Depository be expunged, and that all forum fees and costs be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

By Order dated August 24, 2005, the Panel denied Claimant's Motion to Move Hearing Location.

The parties have 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. Respondents are jointly and severally liable to and shall pay to Claimant compensatory damages of \$156,006.55, plus simple interest at a rate of 10% per annum from July 25, 2002 until the date of payment in full;
2. The parties shall bear their respective costs, including attorneys' fees, 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 = \$ 300.00

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, Respondent Merrill Lynch is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

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 Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: December 7, 2004 1 session	
Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: September 7, 2005 2 sessions	
September 8, 2005 2 sessions	
Total Forum Fees	= \$5,625.00

1. The Panel has assessed \$2,812.50 of the forum fees to Claimant.
2. The Panel has assessed \$2,812.50 of the forum fees jointly and severally to Respondent.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$2,812.50
Total Fees	= \$3,112.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$1,687.50

2. Respondent is assessed and shall pay the following fees:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally assessed and shall pay the following fees:

Forum Fees	= \$2,812.50
Total Fees	= \$2,812.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$2,812.50

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

ARBITRATION PANEL

Chase Boone Saunders	-	Public Arbitrator, Presiding Chairperson
Clarence C. Guy	-	Public Arbitrator, Panelist
Victor F. Alvarez	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Chase Boone Saunders
Public Arbitrator, Presiding Chairperson



Signature Date

Clarence C. Guy
Public Arbitrator, Panelist

Signature Date

Victor F. Alvarez
Non-Public Arbitrator, Panelist

Signature Date


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

Concurring Arbitrators' Signatures

Chase Boone Saunders
Public Arbitrator, Presiding Chairperson

Signature Date

Clarence C. Guy
Clarence C. Guy
Public Arbitrator, Panelist

9-15-05
Signature Date

Victor F. Alvarez
Non-Public Arbitrator, Panelist

Signature Date

September 16, 2005
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures

Chase Boone Saunders
Public Arbitrator, Presiding Chairperson

Signature Date

Clarence C. Guy
Public Arbitrator, Panelist

Signature Date

Victor F. Alvarez

Victor F. Alvarez
Non-Public Arbitrator, Panelist

9/16/05
Signature Date

September 16, 2005
Date of Service (For NASD Dispute Resolution office use only)