

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Virginia Smith
Virginia Smith IRA

Case Number: 04-03841

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Andrew Joseph Garber

Hearing Site: Philadelphia, PA

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

REPRESENTATION OF PARTIES

Claimant, Virginia Smith, individually and on behalf of her IRA, hereinafter referred to as "Claimant", was represented by David E. Sternberg, Esq., Wapner, Newman, Wignizer and Brecher, Philadelphia, Pennsylvania.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Andrew Joseph Garber ("Garber"), hereinafter collectively referred to as "Respondents", were represented by William E. Mahoney, Jr., Esq., Stradley Ronon Stevens & Young, LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on May 26, 2004.

Claimant signed the Uniform Submission Agreement on May 3, 2004.

Statement of Answer filed by Respondents on September 24, 2004.

Respondent Garber did not file a Uniform Submission Agreement.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on February 8, 2005.

CASE SUMMARY

Claimant asserted the following causes of action, among others: common law fraud; violation of the securities law and regulations of the Commonwealth of Pennsylvania; violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law; 73 P.S. Sections 201-1 *et seq*; breach of fiduciary duty; and negligence. The causes of action relate to the purchase of various speculative technology stocks including JDS Uniphase.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant fails to state a claim upon which relief can be granted; Claimant is estopped from asserting her claims due to her own acts of conduct; failure to mitigate damages; Claimant authorized, ratified, approved,

accepted, acquiesced in, and confirmed the acts complained of; comparative and contributory negligence; statute of limitation; and Claimant's claims are barred by the doctrines of estoppel, waiver, and ratification.

RELIEF REQUESTED

Claimant in her Statement of Claim requested:

Compensatory Damages	\$659,219.23
Punitive Damages	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Garber did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and the claim, is bound by the determination of the Arbitration Panel (the "Panel") on all issues submitted.

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. All claims against Respondents are denied with prejudice in their entirety;
2. All claims for punitive damages and attorneys' fees are denied in their entirety;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein 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

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(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00
Total Member Fees	= \$7,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 18-20, 2005 adjournment requested by Respondents = \$1,200.00

The Panel has assessed \$1,200.00 of the adjournment fees jointly and severally to Respondents.

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 @ \$1,200.00 = \$1,200.00

Pre-hearing conference: January 27, 2005 1 session

Six (6) Hearing sessions @ \$1,200.00 = \$7,200.00

Hearing Dates: January 16, 2006 2 sessions
January 17, 2006 2 sessions
January 18, 2006 2 sessions

Total Forum Fees = \$8,400.00

1. The Panel has assessed \$4,200.00 of the forum fees to Claimant.

2. The Panel has assessed \$4,200.00 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

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

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$4,200.00
Total Fees	= \$4,575.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$3,000.00

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

Member Fees	= \$7,000.00
Total Fees	= \$7,000.00
Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 00.00

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

Adjournment Fee	= \$1,200.00
Forum Fees	= \$4,200.00
Total Fees	= \$5,400.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$5,400.00

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

ARBITRATION PANEL

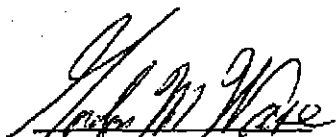
Gordon M. Wase, Esq.	-	Public Arbitrator, Presiding Chairperson
Mark E. Hollern	-	Public Arbitrator, Panelist
Martin Kobak	-	Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures



Gordon M. Wase, Esq
Public Arbitrator, Presiding Chairperson

1/23/06
Signature Date

Mark E. Hollern
Public Arbitrator, Panelist

Signature Date

Martin Kobak
Non-Public Arbitrator, Panelist

Signature Date

1/25/06
Date of Service (For NASD Dispute Resolution office use only)

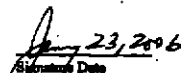
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Consenting Arbitrators' Signatures

Gordon M. Wase, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Mark E. Gollman
Public Arbitrator, Panelist


Signature Date 23, 2006

Martin Kobak
Non-Public Arbitrator, Panelist

Signature Date

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

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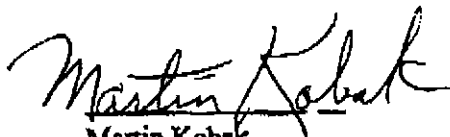
Concurring Arbitrators' Signatures

Gordon M. Wase, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Mark E. Hollem
Public Arbitrator, Panelist

Signature Date



Martin Kobak
Non-Public Arbitrator, Panelist

1/21/2006
Signature Date

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