

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Claimant

Nicole C. Newton

and

Case Number: 04-03854
Hearing Site: Detroit, Michigan

Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.,
Scott C. Tater, Raymond B. Wert, II,
The Wert Group and Spickler-Wert Group

NATURE OF CASE

Customer v. Member, Associated Persons and Non-Members

REPRESENTATION OF PARTIES

Nicole C. Newton ("Claimant") was represented by Anthony W. Trogan, Esq., and Lysa Postula-Stein, Esq., Anthony V. Trogan, P.L.L.C., West Bloomfield, Michigan.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Scott C. Tater ("Tater"), hereinafter collectively referred to as "Respondents," were represented by W. Scott Turnbull, Esq., Miller Canfield Paddock and Stone PLC, Detroit, Michigan.

Raymond B. Wert, II, The Wert Group and Spickler-Wert Group did not appear.

CASE INFORMATION

The Statement of Claim was filed on or about May 28, 2004. The Submission Agreement of Claimant was signed on or about May 16, 2004.

The Statement of Answer was filed jointly by Respondents, Merrill Lynch and Tater, on or about July 19, 2004. The Submission Agreement of Merrill Lynch was signed on or about June 1, 2004. The Submission Agreement of Tater was signed on or about September 16, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract; common law fraud; promissory estoppel; negligence; breach of fiduciary duty; and breach of Michigan securities laws. The causes of action related to investments in unspecified high-risk individual "tech" securities and in high-risk mutual funds.

Unless specifically admitted in their Answer, Respondents Merrill Lynch and Tater denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of claim fails to state a claim upon which relief can be granted; Claimant failed to mitigate her damages; and Claimant is barred by reason of the doctrines of waiver, estoppel, laches and release.

RELIEF REQUESTED

Claimant requested an award in the amount of

Actual/Compensatory Damages	\$128,000.00
Punitive Damages	Unspecified
Interest	Unspecified
Attorney's Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondent Tater also requested that all references to this matter be expunged from his registration records maintained by NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

Respondents, The Wert Group and Spickler-Wert Group, are not NASD Member Firms. The Wert Group and Spickler-Wert Group did not voluntarily submit to NASD arbitration, nor was a contract to arbitrate disputes with The Wert Group or Spickler-Wert Group, presented. Therefore, The Wert Group and Spickler-Wert Group are not compelled by NASD rules to arbitrate disputes in this forum. In the absence of The Wert Group and Spickler-Wert Group's voluntary submission, NASD does not have jurisdiction over these parties.

Respondents indicated in their Answer that Respondent Wert was deceased.

Claimant, having had an opportunity to review the records and documents produced in prehearing discovery and discuss the contents thereof with their counsel, stipulated and agree with Respondents not to oppose the expungement of all reference to the above-captioned arbitration from all registration records of Respondent Scott Tater maintained by the NASD Central Registration Depository because Scott Tater was not involved in the alleged investment related sales practice violation regarding the sale of the subject variable annuity.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Claimant's claims, having been withdrawn, are dismissed with prejudice;
- 2.) Other than Forum Fees, which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Scott C. Tater's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Scott C. Tater must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation; and

- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby dismissed with prejudice.

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Merrill Lynch, Pierce, Fenner & Smith, Inc.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$1,125.00 = \$1,125.00

Pre-hearing conference: October 8, 2004 1 session

Total Forum Fees = \$1,125.00

The Arbitration Panel has assessed \$562.50 of the forum fees to Nicole C. Newton.

Pursuant to NASD Code of Arbitration Procedure Rule 10332(f), NASD retains Claimant's Hearing Session Deposit of \$562.50.

The Arbitration Panel has assessed \$562.50 of the forum fees jointly and severally to Merrill Lynch and Scott C. Tater.

FEE SUMMARY

Claimant, Nicole C. Newton, is liable for:

Initial Filing Fee	= \$ 300.00
Retained Hearing Session Deposit	= \$ 562.50
Forum Fees	= \$ 562.50
Total Fees	= \$ 1,425.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill Lynch is liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,387.50
Balance Refunded by NASD Dispute Resolution	= \$ 187.50

Respondents, Merrill Lynch and Tater, are jointly and severally liable for:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less payments	= \$ 562.50
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Richard Joseph Rankin, Esq. – Public Arbitrator, Presiding Chair
Brace K. Case, Esq. - Public Arbitrator
Anthony J. Bove, III - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Richard Joseph Rankin, Esq.
Richard Joseph Rankin, Esq.
Public Arbitrator, Presiding Chair

03/23/06
Signature Date

/s/ Brace K. Case, Esq.
Brace K. Case, Esq.
Public Arbitrator

03/21/06
Signature Date

/s/ Anthony J. Bove, III
Anthony J. Bove, III
Non-Public Arbitrator

03/21/06
Signature Date

03/27/06
Date of Service (For NASD office use only)

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Brace K. Case, Esq. - Public Arbitrator
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Richard Joseph Rankin, Esq.
Public Arbitrator, Presiding Chair

3-23-06
Signature Date

Brace K. Case, Esq.
Public Arbitrator

Signature Date

Anthony J. Bove, III
Non-Public Arbitrator

Signature Date

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