

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Gerry L. DeMuesy (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Gregory W. Hartrum (Respondents).

Case Number: 04-04174

Hearing Site: Cincinnati, Ohio

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

REPRESENTATION OF PARTIES

Claimant Gerry L. DeMuesy hereinafter referred to as "Claimant": Peter F. von Meister, Esq., Green & Green, Lawyers, Dayton, OH.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Gregory W. Hartrum ("Hartrum"), hereinafter collectively referred to as "Respondents": Russell S. Sayre, Esq., Taft Stettinius & Hollister LLP, Cincinnati, OH. Previously represented by Alan S. Rafterman, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: June 8, 2004.

Claimant's Response to Motion for More Definite Statement filed on or about: September 7, 2004.

Claimant's Amended Statement of Claim filed on or about: December 14, 2004.

Claimant signed the Uniform Submission Agreement: June 21, 2004.

Respondents' Preliminary Answer and Motion for a More Definitive Statement of Claim filed on or about: August 20, 2004.

Respondents' Reply letter in Further Support of their Motion for a More Definitive Statement of Claim filed on or about: September 22, 2004.

Respondents' Amended Answer filed on or about: January 11, 2005.

Respondent Merrill Lynch signed the Uniform Submission Agreement: July 20, 2004.

Respondent Hartrum signed the Uniform Submission Agreement: August 17, 2004.

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CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; negligence; fraud; and unauthorized trading.

The causes of action relate to Compaq Computer; Oracle Systems, Putnam New Opportunities, Chase Vista Clas B, Putnam Health Sciences, Corning Glass Works, Janus Mercury, Strong Growth 20, Alliance Technology, Janus Fund, Merrill Lynch Special Value, Janus Enterprise, Eaton Vance World Wide Health Services, Oakmark Small Cap, Oakmark Select, Wasatch Ultra, Royce Low Price, State Street Aurora, Pimco Renaissance, Adobe Systems, Ariba, Inc., Calpine Copr, EMC Corp., Fuelcell Energy, Sanmina Corp., Network Appliance, Brocade Communications, Van Kampen Aggressive Growth, and Pimco Global Innovation.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested that the Panel award her compensatory damages in the amount of not less than \$143,750.00, plus compensatory damages for her loss of growth in the amount of not less than \$79,800.00; unspecified compensatory damages for her management fees and commissions charged; unspecified punitive damages; interest at the statutory rate pursuant to Ohio Revised Code §1343.03 from the withdrawal of DeMuesy's investments to satisfaction of the award; assessment of NASD-DR costs and fees against Respondents; and initiation of a referral pursuant to Rule 10105 of the Code of Arbitration Procedure for disciplinary investigation of the conduct of Merrill Lynch's Vice President, Rebecca J. Romano.

Respondents requested that the Panel dismiss the Claimant's Statement of Claim with prejudice; order all reference to this matter be removed from Mr. Hartum's CRD records; grant Respondents their costs and fees associated with defending this arbitration; and award Respondents such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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. Claimant's claims are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration

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from Respondent Hartrum's registration records maintained by the Central Registration Depository ("CRD") based on the defamatory nature of the information, with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Hartrum 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 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is false.

3. 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	= \$ 300.00
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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, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

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

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

April 18-19, 2005 adjournment by Respondents	= Waived
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Forum Fees and Assessments

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

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One (1) Pre-hearing session with Panel @ \$1,125.00 = \$ 1,125.00
 Pre-hearing conference: November 1, 2004 1 session

Nine (9) Hearing sessions @ \$1,125.00 = \$10,125.00
 Hearing Dates: March 8, 2005 2 sessions
 March 9, 2005 3 sessions
 July 7, 2005 2 sessions
 July 8, 2005 2 sessions

Total Forum Fees = \$11,250.00

1. The Panel has assessed \$5,625.00 of the forum fees to Claimant.
2. The Panel has assessed \$5,625.00 of the forum fees jointly and severally to Respondents Merrill Lynch and Hartrum.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$5,625.00
Total Fees	= \$5,925.00
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$4,500.00

2. Respondent Merrill Lynch is solely liable for:

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

4. Respondents Merrill Lynch and Hartrum are jointly and severally liable for:

<u>Forum Fees</u>	= \$5,625.00
Total Fees	= \$5,625.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$5,625.00

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

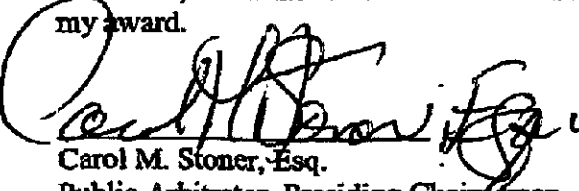
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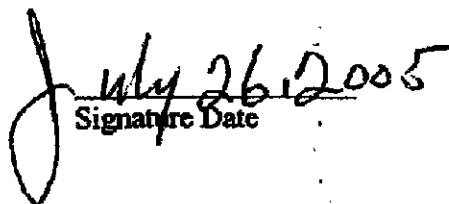
ARBITRATION PANEL

Carol M. Stoner, Esq.	-	Public Arbitrator, Presiding Chairperson
Barbara E. Dixon	-	Public Arbitrator
Wallace E. Sarran, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Carol M. Stoner, Esq.
Public Arbitrator, Presiding Chairperson

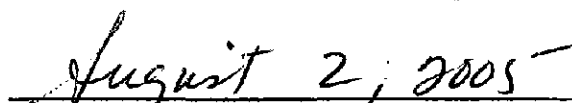

Signature Date

Barbara E. Dixon
Public Arbitrator

Signature Date

Wallace E. Sarran, Jr.
Non-Public Arbitrator

Signature Date


Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Carol M. Stoner, Esq.	-	Public Arbitrator, Presiding Chairperson
Barbara E. Dixon	-	Public Arbitrator
Wallace E. Sarran, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Carol M. Stoner, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Barbara E. Dixon

Barbara E. Dixon
Public Arbitrator

July 25, 2005

Signature Date

Wallace E. Sarran, Jr.
Non-Public Arbitrator

Signature Date

August 2, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Carol M. Stoner, Esq.
Barbara E. Dixon
Wallace E. Sarraf, Jr.

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

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Carol M. Stoner, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Barbara E. Dixon
Public Arbitrator

Signature Date

Wallace E. Sarraf, Jr.
Wallace E. Sarraf, Jr.
Non-Public Arbitrator

7/26/05
Signature Date

August 2, 2005
Date of Service (For NASD Dispute Resolution use only)