

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Claude Wilkerson
Zoweader Wilkerson

Case Number: 04-04566

Names of the Respondents

Merrill Lynch, Pierce,
Fenner & Smith, Inc.
William W. Grooms

Hearing Site: Birmingham, Alabama

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

REPRESENTATION OF PARTIES

For Claude Wilkerson and Zoweader Wilkerson, hereinafter collectively referred to as "Claimants": Terry D. Turner, Jr., Esq., James McMullan, Esq. and Allen Hammer, Esq., Gentle, Pickens & Turner, Birmingham, Alabama.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and William W. Grooms ("Grooms"), hereinafter collectively referred to as "Respondents": Julie Wilson Portera, Esq., Bradley B. Rounsaville, Esq. and Kathryn R. Eldridge, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: June 25, 2004.

Claimants signed the Uniform Submission Agreement: June 25, 2004.

Statement of Answer filed by Respondents on or about: September 9, 2004.

Respondent Merrill signed the Uniform Submission Agreement: September 21, 2004.

Respondent Grooms signed the Uniform Submission Agreement: September 23, 2004.

Respondents' Motion to Dismiss Based on Statute of Limitations Grounds filed on or about: September 14, 2004.

Claimants' Response in Opposition to Respondents' Motion to Dismiss Based on Statute of Limitations Grounds filed on or about: October 15, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: against all Respondents for breach of fiduciary duty; against all Respondents for professional negligence; against all Respondents for violation of the suitability requirements under Section 8-6-19 of the Alabama Securities Act; against all Respondents for fraud, misrepresentations, or omissions in violation of Section 8-6-17 of the Alabama Securities Act; against Respondent Merrill for failure to supervise in violation of Section 8-6-19 of Alabama Securities Act; against Respondent Merrill for violation of Section 8-6-19(c) of Alabama Securities Act and for liability under respondeat superior; against all Respondents for fraud; and, against all Respondents for breach of brokerage contract. The causes

of action relate to Claimants' investments in unspecified equities and fixed income securities.

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

RELIEF REQUESTED

Claimants requested that Respondents be found to be in breach of their fiduciary duties owed to Claimants, in breach of the Brokerage Contract and their agreement to abide by the Financial Foundation Plan, to have committed common law negligence, to have committed common law fraud, and to have committed violations of various parts of the Alabama Securities Acts and other applicable law, regulations and industry rules; that Claimants be awarded actual damages of \$70,000.00, punitive damages of \$5,000.00, together with interest and costs from Respondents, severally and separately; that Claimants be awarded compensatory damages in an amount to be determined and awarded expert witness fees and costs; the remedies provided in Section 8-6-19 of the Alabama Securities Act, including interest at six percent per annum, costs and reasonable attorneys' fees and costs; and, such other, further, general and more equitable relief against Respondents as the arbitration panel deemed just and proper.

Respondents requested that the relief requested in the Statement of Claim be denied in all respects, that any and all references to this matter be expunged from Respondent Grooms' Central Registration Depository ("CRD") record, that the costs of this proceeding be assessed against Claimants, and that the arbitration panel grant Respondents such other and further relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

In Respondents' Motion to Dismiss Based Upon Statute of Limitations Grounds, Respondents asserted that Claimants sat on their rights and did not file their Statement of Claim until after the applicable statutes of limitations had run. Thus, Respondents asserted Claimants' claims should be dismissed. In response, Claimants asserted that as to the fraud and Alabama Securities Act claims, the claims should not be dismissed because Claimants did not know, and should not have reasonably known, of the fraud until their portfolio suffered a great loss which occurred in late 2002. As to the negligence, breach of fiduciary duty and breach of contract claims, Claimants asserted they should not be dismissed completely because they were ongoing and continuous. On or about November 9, 2004, the arbitration panel issued an order which deferred ruling on Respondents' Motion to Dismiss on Statute of Limitations Grounds until the conclusion of the evidentiary hearing. At the evidentiary hearing, the arbitration panel denied Respondents' Motion to Dismiss Based on Statute of Limitations Grounds.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the

post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

The Panel finds for Respondents and all claims are denied.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Grooms' registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Grooms 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 claim, allegation, or information is false.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$225.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$1,700.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before

the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

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 the Panel @ \$750.00	= \$750.00
Pre-hearing conference: November 9, 2004 1 session	
Four (4) Hearing sessions @ \$750.00	= \$3,000.00
Hearing Dates: August 22, 2005 2 sessions	
August 23, 2005 2 sessions	
Total Forum Fees	= \$3,750.00

The Panel has assessed \$1,875.00 of the forum fees to Claimant.

The Panel has assessed \$1,875.00 of the forum fees to Respondent Merrill.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

FEE SUMMARY

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$225.00
Forum Fees	= \$1,875.00
Total Fees	= \$2,100.00

Less payments = \$975.00

Balance Due NASD Dispute Resolution = \$1,125.00

Respondent Merrill is solely liable for:

Member Fees = \$3,550.00

Forum Fees = \$1,875.00

Total Fees = \$5,425.00

Less payments = \$3,550.00

Balance Due NASD Dispute Resolution = \$1,875.00

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

ARBITRATION PANEL

John W. Davis, Esq.	-	Public Arbitrator, Presiding Chair
Thomas C. Harris	-	Public Arbitrator
Tom G. Gambill, PhD	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/S/_____
John W. Davis, Esq.
Public Arbitrator, Presiding Chair

August 25, 2005
Signature Date

_____/S/_____
Thomas C. Harris
Public Arbitrator

August 29, 2005
Signature Date

_____/S/_____
Tom G. Gambill, PhD
Non-Public Arbitrator

August 25, 2005
Signature Date

August 30, 2005
Date of Service (For NASD Dispute Resolution office use only)

Less payments = \$975.00

Balance Due NASD Dispute Resolution = \$1,125.00

Respondent Merrill is solely liable for:

Member Fees = \$3,550.00

Forum Fees = \$1,875.00

Total Fees = \$5,425.00

Less payments = \$3,550.00

Balance Due NASD Dispute Resolution = \$1,875.00

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Thomas C. Harris - Public Arbitrator

Tom G. Gambill, PhD - Non-Public Arbitrator

Concurring Arbitrators' Signatures


John W. Davis, Esq.
Public Arbitrator, Presiding Chair

8-25-05
Signature Date

Thomas C. Harris
Public Arbitrator

Signature Date

Tom G. Gambill, PhD
Non-Public Arbitrator

Signature Date

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

Less payments	= \$975.00
Balance Due NASD Dispute Resolution	= \$1,125.00
Respondent Merrill is solely liable for:	
Member Fees	= \$3,530.00
Forum Fees	= \$1,875.00
Total Fees	= \$5,425.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$1,875.00

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

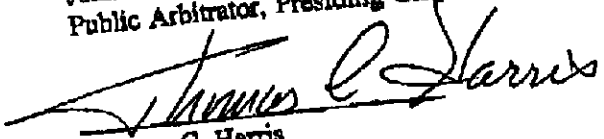
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Thomas C. Harris
Tom G. Gambill, PhD

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

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John W. Davis, Esq.
Public Arbitrator, Presiding Chair


Thomas C. Harris
Public Arbitrator

Tom G. Gambill, PhD
Non-Public Arbitrator

Signature Date

08/29/05
Signature Date

Signature Date

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

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Respondent Merrill is solely liable for:

Member Fees = \$3,550.00

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Less payments = \$3,550.00

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John W. Davis, Esq.

Thomas C. Harris

Tom G. Gambill, PhD

- Public Arbitrator, Presiding Chair

- Public Arbitrator

- Non-Public Arbitrator

Concurring Arbitrators' Signatures

John W. Davis, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Thomas C. Harris
Public Arbitrator

Signature Date



Tom G. Gambill, PhD
Non-Public Arbitrator

8-25-05

Signature Date

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