

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

William C. and Sarah E. Adams

and

Case Number: 04-05026
Hearing Site: Houston, Texas

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc., and
Carl Lee Thompson

NATURE OF DISPUTE

Customers v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

William C. and Sarah E. Adams ("**Claimants**") were represented by Annette M. Henry, Esq., The Henry Law Firm, Houston, Texas.

Merrill Lynch Pierce Fenner & Smith, Inc. ("**Merrill Lynch**") and Carl Lee Thompson ("**Thompson**"), hereinafter collectively referred to as "Respondents," were represented by David E. Bamberger, Esq., Merrill Lynch, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about July 14, 2004. The Submission Agreement of Claimants, William C. and Sarah E. Adams, was signed on or about October 21, 2003.

The Joint Statement of Answer was filed by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Carl Lee Thompson, on or about September 22, 2004. The Submission Agreement of Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about September 7, 2004. The Submission Agreement of Respondent, Carl Lee Thompson, was signed on or about September 12, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, breach of fiduciary duty, negligence and suitability. The causes of action related to the recommendation and purchase of various unspecified securities. Claimants alleged that Respondents placed

them in unsuitable investments that did not correspond to their investment objectives, being retirees. Claimants also alleged that Respondents knew that they were conservative investors and they were relying on Respondents to manage their financial affairs.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to state a claim upon which relief can be granted; Respondents did not guarantee Claimants any specific level of return on their investments; no conduct on the part of Respondents was the proximate cause of any of the losses alleged by Claimants; Respondents never recommended an unsuitable investment for Claimants' account; neither Respondent acted at any time with scienter or with any intent to harm the financial interests of the Claimants; Claimants failed to mitigate their damages; and Claimants' claims are barred by the doctrines of ratification, waiver, estoppel.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$500,000.00
Punitive /Exemplary Damages	Unspecified
Interest	Unspecified
Attorneys' 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.

OTHER ISSUES CONSIDERED & DECIDED

The Panel has made the following findings:

Claimants bear a large part of the blame for the losses in their accounts because they not only ignored their monthly statements but also separate letters detailing their losses. Mrs. Adams, participated in the risk taking decisions. Claimants may not have full measure of the damages they seek. At the same time, Merrill Lynch and Carl Lee Thompson knew Claimants were too heavily weighted in equities and that some were unsuitable for Claimants.

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 NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for and shall pay to Claimants, William C. and Sarah E. Adams, the sum of \$81,000.00 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee 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 firm that employed the associated person 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

Adjournment Fees

Adjournments granted during these proceedings:

June 1-3, 2004, adjournment requested by the parties = \$ 1,125.00
(waived due to NASD mediation)

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel x \$1,125.00	= \$ 3,375.00
Pre-hearing conferences:	
December 21, 2004	1 session
February 2, 2005	1 session
May 4, 2005	1 session
Six (6) Hearing sessions x \$1,125.00	= \$ 6,750.00
Hearing Dates:	
July 7, 2005	2 sessions
July 8, 2005	2 sessions
July 9, 2005	2 sessions
<hr/> Total Forum Fees	<hr/> = \$ 10,125.00

The Arbitration Panel has assessed \$5,062.50 of the forum fees jointly and severally to William C. and Sarah E. Adams.

The Arbitration Panel has assessed \$5,062.50 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc. and Carl Lee Thompson.

Fee Summary

Claimants, William C. and Sarah E. Adams, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,062.50
<hr/> Total Fees	<hr/> = \$ 5,362.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 3,937.50

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for:

Member Fees	= \$ 5,200.00
<hr/> Total Fees	<hr/> = \$ 5,200.00

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

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Carl Lee Thompson, are jointly and severally liable for:

Fee Type	= \$ 5,062.50
Total Fees	= \$ 5,062.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,062.50

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

ARBITRATION PANEL

David G. Beerbower, Esq. - Public Arbitrator, Presiding Chair
James P. Hoefling - Public Arbitrator
Charles A. Bankston - Non-Public Arbitrator

Concurring Arbitrators:

/s/ David G. Beerbower, Esq.
David G. Beerbower, Esq.
Public Arbitrator, Presiding Chair

July 15, 2005
Signature Date

/s/ James P. Hoefling
James P. Hoefling
Public Arbitrator

July 15, 2005
Signature Date

/s/ Charles A. Bankston
Charles A. Bankston
Non-Public Arbitrator

July 15, 2005
Signature Date

July 15, 2005
Date of Service (For NASD office use only)


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James P. Hoefling - Public Arbitrator

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David G. Beerbower, Esq.
Public Arbitrator, Presiding Chair

7-15-05

Signature Date

James P. Hoefling
Public Arbitrator

Signature Date

Charles A. Bankston
Non-Public Arbitrator

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