

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Robert and Sharon McCarthy,
Claimants

Case Number: - 04-05123

v.

Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Scott Alan Bylsma,
Respondents

Hearing Site: Chicago, Illinois

NATURE OF THE DISPUTE

Customers vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Robert and Sharon McCarthy (the "McCarthys"), hereinafter referred to as "Claimant": Howard B. Prossnitz, Esq. of the Law Offices of Birndorf & Birndorf, located in Chicago, Illinois.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Scott Alan Bylsma ("Bylsma"), hereinafter collectively referred to as "Respondents": W. Scott Turnbull, Esq. of the law firm, Miller, Canfield, Paddock & Stone, PLC located in Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: July 15, 2004

Claimants signed the Uniform Submission Agreement: June 18, 2004

Statement of Answer jointly filed by Respondents, Merrill Lynch Bylsma, on or about: September 15, 2004

Respondent Merrill Lynch signed the Uniform Submission Agreement: August 4, 2004

Respondent Bylsma signed the Uniform Submission Agreement: August 30, 2004

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, breach of fiduciary duty, fraud, negligence, conversion and violation of state and federal securities laws.

Unless specifically admitted in its Answer, Respondents Merrill Lynch and Bylsma denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim and all claims therein fail to state a claim upon which relief can be granted.
2. The Statement of Claim and all claims therein are barred by reason of the applicable statute of limitations or other period of limitations.
3. The Statement of Claim and all claims therein are barred by reason of Claimants' negligence, comparative negligence and contributory negligence.
4. The Statement of Claim and all claims therein are barred by virtue of the negligence, comparative negligence and contributory negligence of third parties and acts or actions taken by third parties who are not related to Respondents or whose acts or actions are

not attributable to Respondents.

5. The Statement of Claim and all claims therein are barred by reason of Claimants' ratification of the actions complained of therein.
6. The Statement of Claim and all claims therein are barred by reason of the doctrines of waiver, estoppel, laches and release.
7. The Statement of Claim and all claims therein are barred for the reason that Claimants did not rely on any alleged acts, misrepresentations or omissions.
8. The Statement of Claim and all claims therein are barred for the reason that Claimants exercised active control over their accounts with Merrill Lynch and all investments related thereto.
9. The Statement of Claim and all claims therein are barred for the reason that the alleged actions of Respondents were not the proximate cause or the cause in fact of any alleged injury.
10. The Statement of Claim and all claims therein are barred for the reason that Respondents exercised due care and acted in good faith with respect to Claimants' accounts.
11. The Statement of Claim and all claims therein are barred for the reason that Claimants failed to give timely notice of the acts complained of to Respondents.
12. The Statement of Claim and all claims therein are barred for the reason that Claimants failed to mitigate their damages.
13. The Statement of Claim and all claims therein are barred for the reason that Claimants agreed to indemnify Respondents from any and all claims under the durable power of attorney for retirement accounts.
14. Insofar as the Statement of Claim seeks or may seek punitive and/or exemplary damages, such damages are barred under applicable state law and as unconstitutional in that among other things, such damage deprive Respondents of due process of law and equal protection of the laws.

RELIEF REQUESTED

Claimants requested \$98,193.16 in compensatory damages; punitive damages, interest, plus costs and further relief as the Panel deems just.

Respondents requested dismissal of Claimants' claims in their entirety, plus costs and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

STIPULATION

Claimant has agreed to withdraw and dismiss all claims in the above-entitled case against Respondents, Merrill Lynch and Bylsma, with prejudice and without costs.

Claimant, having had an opportunity to review the records and documents produced in pre-hearing discovery and discuss the contents thereof with their counsel, stipulate and agree with Respondents not to oppose the expungement of all reference to the above-captioned arbitration from all registration records of Respondent, Scott Alan Bylsma, maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-90, Respondent Bylsma must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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

- 1.) Any and all claims having been withdrawn, the same are hereby dismissed with prejudice and without costs, except as specified hereinafter.
- 2.) Having received testimony and exhibits in the expungement hearing held on May 5, 2005 in Chicago, Illinois, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Scott Alan Bylsma's registration records maintained by the NASD Central Registration Depository ("CRD"). The Panel finds that Respondent Bylsma was not involved in the alleged investment-related sales practice violation.

Pursuant to NASD Notice to Members 04-16 and 99-09, Respondent Bylsma must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

- 3.) Any and all relief not specifically enumerated, including punitive damages is hereby denied 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 = \$ 225.00

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, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party to this proceeding.

Member surcharge = \$1,100.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$1,700.00

Forum Fees and Assessments

The 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 x \$450.00 | = \$ 450.00 |
| Pre-Hearing Date: May 5, 2005 1 session | |
| Total Forum Fees | = \$ 450.00 |

The Arbitrator assessed 100% of the total forum fees in the amount of \$450.00 jointly and severally to Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Scott Alan Bylsma.

Pursuant to NASD Dispute Resolution Code of Arbitration Procedure Rule 10332(f): Claimants' Hearing Session Deposit of \$750.00 is retained by NASD.

FEE SUMMARY

Claimants, Robert and Sharon McCarthy, are hereby jointly liable for:

| | |
|-------------------------------------|-------------|
| Initial Filing Fee | = \$ 225.00 |
| Hearing Session Deposit retained | = \$ 750.00 |
| Total Fees | = \$ 975.00 |
| Less payments | = \$ 975.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

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

| | |
|-------------------------------------|--------------|
| Member Fees | = \$3,550.00 |
| Less payments | = \$3,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Scott Alan Bylsma, are hereby jointly and severally liable for:

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All balances are due to NASD Dispute Resolution.

ARBITRATION PANEL

| | | |
|------------------------|---|--|
| John W. Jerak, Esq. | - | Public Arbitrator, Presiding Chairperson |
| Jeffrey W. Finke, Esq. | - | Public Arbitrator |
| Daniel J. Foley | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

/s/ John W. Jerak, Esq.

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

11/17/05

Signature Date

/s/ Jeffrey W. Finke, Esq.

Jeffrey W. Finke, Esq.
Public Arbitrator

11/14/05

Signature Date

/s/ Daniel J. Foley
Daniel J. Foley
Non-Public Arbitrator

11/2/05
Signature Date

11/17/05
Date of Service (For NASD office use only)

NASD Dispute Resolution

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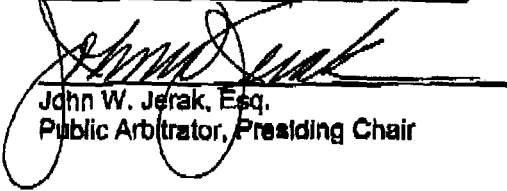
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Public Arbitrator, Presiding Chair


Signature Date

Jeffrey W. Finke, Esq.
Public Arbitrator

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| Daniel J. Foley | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures


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

Signature Date


Jeffrey W. Finke, Esq.
Public Arbitrator

November 14, 2005
Signature Date

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Daniel J. Foley
Non-Public Arbitrator



Signature Date

Date of Service (For NASD office use only)