

**AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Names of Claimants

David L. and Robert L. Hughes

and

Case Number: 04-05161
Hearing Site: Houston, Texas

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,
Shannon Marie Clifford,
Safeco Insurance Company, and
Marjorie Brown Hughes

NATURE OF DISPUTE

Customers v. Member Firm, Associated Person, and Non-Members

REPRESENTATION OF PARTIES

David L. and Robert L. Hughes ("**Claimants**") were represented by James C. Benson, Esq., Benson & Anderson, LLP, Houston, Texas.

Merrill Lynch Pierce Fenner & Smith, Inc. ("**Merrill Lynch**"), Shannon Marie Clifford ("**Clifford**") and Safeco Insurance Company ("**Safeco**") were represented by Linda A. Brooks, Esq., Ogden, Gibson, White, Brooks & Longoria, Houston, Texas.

Marjorie Brown Hughes ("**M. Hughes**") was represented by Patrick Huzinec, Esq., Novili, Harvie & Huzinec, P.C., Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about July 19, 2004. The First Amended Statement of Claim was filed on or about November 17, 2004. The Submission Agreement of Claimant, Robert L. Hughes, was signed on or about July 9, 2005. The Submission Agreement of Claimant, David L. Hughes, was signed on or about July 11, 2005.

A Joint Statement of Answer was filed by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Shannon Marie Clifford and Safeco Insurance Company, on or about September 23, 2004. Respondents', Merrill Lynch, Clifford and Safeco, filed a Response to the First Amended Statement of Claim on or about January 11, 2005. Their First

Amended Response to the First Amended Statement of Claim was filed on or about March 16, 2005. The Submission Agreement of Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about October 5, 2004. The Submission Agreement of Respondent, Shannon Marie Clifford, was signed on or about October 14, 2004. The Submission Agreement of Respondent, Safeco Insurance Company, was signed on or about October 5, 2004.

A Statement of Answer was filed by Respondent, Marjorie Brown Hughes, on or about October 1, 2004. Respondent, M. Hughes, filed a Response to the First Amended Statement of Claim on or about February 23, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: failure to supervise and negligence. The causes of action related to the allegation that Respondent, M. Hughes, tortiously interfered with Claimants inheritance rights relative to account number 417-20833, causing Claimants the loss of their inheritance. Claimants alleged that Respondent Clifford breached her duty as a public official notary by executing a false acknowledgement in violation of Texas statutes, without witnessing Decedent Hughes sign the Transfer Upon Death Agreement Form. Claimants also alleged that Safeco is liable for the negligent performance of Respondent Clifford's duties as a notary. Finally, Claimants alleged that Respondent, Merrill Lynch, is vicariously liable for the negligent conduct of its agent, Clifford, under the doctrine of respondeat superior.

Unless specifically admitted in their Answer, Respondents, Merrill Lynch, Clifford and Safeco, 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; Claimants have not incurred any damages arising from the actions of Respondents; Claimants are barred from recovery because they failed to mitigate their damages, if any; and Respondents did not engage in any conduct that would justify an award of compensatory damages under any theory of relief, whether legal or equitable.

Unless specifically admitted in her Answer, Respondent, M. Hughes, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to state upon which relief can be granted; Claimants have not incurred any damages arising from the actions of Respondent M. Hughes; Respondent M. Hughes did not engage in any conduct that would justify an award of compensatory damages under theory of relief, legal or equitable; all transactions upon which Claimants base their alleged claims against Respondent, M. Hughes, were conducted in accordance with the applicable Exchange and SRO rules and regulations.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$233,209.33
Punitive/Exemplary Damages	\$233,209.33
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents, Merrill Lynch, Clifford and Safeco, requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

Respondent, M. Hughes, requested that the claims asserted against her be denied in their entirety and that she be awarded her costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Claimants initially filed suit against Respondent, M. Hughes, in her individual capacity and as Independent Executrix for Decedent Hughes' estate, in Probate Court in Harris County, Texas. After the suit was initiated, Respondent, M. Hughes, brought a third-party action against Respondents, Merrill Lynch, Clifford and Safeco. On March 28, 2003, the probate court ordered the parties to arbitration.

Respondent, M. Hughes, did not file with the NASD Dispute Resolution a properly executed submission to arbitration but by having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Respondents, Merrill Lynch, Clifford, Safeco, and M. Hughes, made oral Motions for Summary Judgment at the close of the Claimants' case. The Panel ruled to defer Respondents' Motions until the close of the case.

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.) The Claimants' action against Respondents, Merrill Lynch, Shannon Clifford and Safeco Insurance Company, are hereby dismissed. While the Panel cannot compliment Ms. Clifford on her failure to comply with the law or her employer's internal rules regarding notary acknowledgements, her act did not deprive David and Robert Hughes of inheritance from their father. There was no causation between the Claimants alleged injury and Ms. Clifford's act;
- 2.) While the Panel's conclusions regarding the liability of Mrs. Marjorie Brown Hughes to Claimants is more difficult for the Panel, we have concluded that Mrs. Hughes is not liable to Claimants. While Mrs. Hughes' actions and writings raised concerns with the Panel, a high level of proof of wrongdoing is required to overcome the effect of legal instruments such as documents presented in this case. Evidence based on circumstances or the personal beliefs of the Claimants, unsupported by direct evidence, are insufficient to cause this Panel to invalidate the Transfer On Death Agreement in evidence;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) 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 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

Adjournment Fees

Adjournments granted during these proceedings:

April 5-7, 2005, adjournment requested by Respondents	= \$ 1,125.00
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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:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00	= \$ 900.00
Pre-hearing conferences: March 31, 2004	1 session
June 14, 2005	1 session
One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: November 19, 2004	1 session
Four (4) Hearing sessions x \$1,125.00	= \$ 4,500.00
Hearing Dates: June 21, 2005	2 sessions
June 22, 2005	2 sessions
Total Forum Fees	= \$ 6,525.00

The Arbitration Panel has assessed \$1,631.25 of the forum fees jointly and severally to David L. and Robert L. Hughes.

The Arbitration Panel has assessed \$1,631.25 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

The Arbitration Panel has assessed \$3,262.50 of the forum fees to Marjorie Brown Hughes.

Fee Summary

Claimants, David L. and Robert L. Hughes, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
Forum Fees	= \$ 1,631.25
<u>Total Fees</u>	<u>= \$ 2,493.75</u>
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,068.75

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

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,631.25
<u>Total Fees</u>	<u>= \$ 6,831.25</u>
<u>Less payments</u>	<u>= \$ 5,950.00</u>
Balance Due NASD Dispute Resolution	= \$ 881.25

Respondent, Marjorie Brown Hughes, is liable for:

Forum Fees	= \$ 3,262.50
<u>Total Fees</u>	<u>= \$ 3,262.50</u>
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,262.50

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Shannon Marie Clifford, Safeco Insurance Company and Marjorie Brown Hughes, are jointly and severally liable for:

Postponement Fee	= \$ 562.50
<u>Total Fees</u>	<u>= \$ 562.50</u>
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

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
Richard R. Nelson, Jr. - Public Arbitrator
Gregory E. Cater - Non-Public Arbitrator

Concurring Arbitrators:

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

July 1, 2005
Signature Date

/s/ Richard R. Nelson, Jr.
Richard R. Nelson, Jr.
Public Arbitrator

July 5, 2005
Signature Date

/s/ Gregory E. Cater
Gregory E. Cater
Non-Public Arbitrator

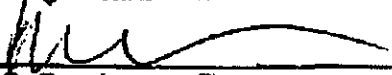
June 30, 2005
Signature Date

July 1, 2005
Date of Service (For NASD office use only)

ARBITRATION PANEL

David G. Beerbower, Esq. - Public Arbitrator, Presiding Chair
Richard R. Nelson, Jr. - Public Arbitrator
Gregory E. Cater - Non-Public Arbitrator

Concurring Arbitrators:



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

7-1-05

Signature Date

Richard R. Nelson, Jr.
Public Arbitrator

Signature Date

Gregory E. Cater
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

David G. Beerbower, Esq. - Public Arbitrator, Presiding Chair
Richard R. Nelson, Jr. - Public Arbitrator
Gregory E. Cater - Non-Public Arbitrator

Concurring Arbitrators:

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

Signature Date



Richard R. Nelson, Jr.
Public Arbitrator

July 5, 2005

Signature Date

Gregory E. Cater
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

David G. Beerbower, Esq. - Public Arbitrator, Presiding Chair
Richard R. Nelson, Jr. - Public Arbitrator
Gregory E. Cater - Non-Public Arbitrator

Concurring Arbitrators:

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

Signature Date

Richard R. Nelson, Jr.
Public Arbitrator

Signature Date



Gregory E. Cater
Non-Public Arbitrator

6/30/15

Signature Date

Date of Service (For NASD office use only)