
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant,

Wanda Wiseman

vs.

Case Number: 04-05380

Names of Respondents,

Hearing Site: Houston, Texas

Merrill Lynch, Pierce, Fenner & Smith Incorporated
And Branson Bywaters.

NATURE OF DISPUTE

Customer versus Member and an Associated Person.

REPRESENTATION OF PARTIES

Claimant, Wanda Wiseman, hereinafter referred to as "Claimant": Jeanne Crandall, Esq., Reyna Hinds & Crandall, 1201 Elm Street, Suite 3850, Dallas, Texas 75270.

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Branson Bywaters ("Bywaters") collectively referred to as "Respondents": Craig H. Clendenin, Esq., The Ballard Law Firm, 3700 Buffalo Speedway, Suite 250, Houston, Texas 77098.

CASE INFORMATION

Statement of Claim was filed on or about: July 22, 2004.

Claimant signed the Uniform Submission Agreement on: July 15, 2004.

Respondents' Answer to Statement of Claim was filed on or about: October 28, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement on: October 25, 2004.

Respondent Bywaters signed the Uniform Submission Agreement on: October 12, 2004.

Amended Statement of Claim was filed on or about: March 14, 2005.

Respondents' Answer to Amended Statement of Claim was filed on or about: April 4, 2005.

On or about June 8, 2005, Claimant and Respondents reached an agreement to settle all claims asserted in the arbitration proceeding.

Joint Motion to Enter Stipulated Award and Joint Request for Expungement was filed on or about: August 30, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, unsuitability, breach of contract, mismanagement, negligence, negligence per se, violation of the Texas Securities Act, unauthorized trading, and failure to supervise. Claimant requested compensatory damages, interest, punitive damages, costs, expenses and attorney's fees. The causes of action relate to various transactions in Claimant's accounts at Merrill Lynch.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: (i) to the extent Claimant incurred any damages, any such damages were attributable to market conditions and not to any acts or omissions of Respondents; (ii) estoppel; (iii) waiver; (iv) ratification; (v) that Respondents at all times acted in good faith and in a commercially reasonable manner with respect to Claimant's accounts; (vi) assumption of risks by Claimant; (vii); statute of limitations; (viii) laches; (ix) failure to mitigate; (x) contributory negligence; (xi) compliance with rules and regulations of the NASD, NYSE, and the Texas Securities Act; and (xii) that an award of punitive or exemplary damages would be in violation of the Constitutions of the United States and Texas.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Compensatory Damages	\$200,000
Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary/Non-Monetary Relief, if any:	Unspecified

Respondents requested that the claims asserted against them be dismissed in all respects and that they be awarded reasonable attorneys' fees and costs and further requested the expungement of Claimant's complaint from the Central Registration Depository ("CRD") record of Branson Bywaters.

OTHER ISSUES CONSIDERED AND DECIDED

On or about June 8, 2005, Claimant and Respondents reached an agreement to settle the claims asserted in the arbitration proceeding.

In light of the settlement of the claims, Claimant and Respondents jointly filed a motion to enter a stipulated award wherein the Parties agreed that all claims in this case be dismissed with prejudice and further requested the expungement of Claimant's complaint from the CRD record of Branson Bywaters on or about August 30, 2005.

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 remains on file with the NASD.

AWARD

Pursuant to the Parties' agreement and after considering the Parties' submissions and representations, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel grants the Parties' Joint Motion to Enter Stipulated Award. As stipulated by the Parties pursuant to their settlement agreement, all claims in this case are dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Bywaters' registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Bywaters 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 the NASD as an additional party and serve the NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

3. Other than the NASD fees specified below, the Parties shall bear their own costs and expenses, including attorneys' fees, incurred in this matter.
4. 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

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 Incorporated is a member firm and a party in these proceedings.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

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:

One (1) Pre-hearing sessions with the Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conferences: January 11, 2005 1 session	
Total Forum Fees	= \$ 1,125.00

Pursuant to Rule 10332(f), NASD Dispute Resolution shall retain the initial hearing session deposit in the sum of \$1,125.00 paid by the Claimant, Wanda Wiseman. In addition, the Panel has assessed \$562.50 of the forum fees jointly and severally to Merrill Lynch and Bywaters.

Fee Summary

1. Claimant, Wanda Wiseman, is solely liable for:

Initial Filing Fees	= \$ 300.00
Rule 10332 (f) Forfeiture Fees	= \$ 1,125.00
Total Fees	= \$ 1,425.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent, Merrill Lynch, is solely liable for:

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

3. Respondents, Merrill Lynch and Branson Bywaters, are jointly and severally liable for:

Forum Fees	= \$ 562.50
Less Payments	= \$ 0.00
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 A. Schuler – Public Arbitrator, Presiding Chairperson
Cecilia H. Morgan – Public Arbitrator
Richard C. Corse – Non-Public Arbitrator

Concurring Arbitrators' Signatures

David A. Schuler

David A. Schuler
Public Arbitrator, Presiding Chairperson

9/8/05

Signature Date

Cecilia H. Morgan
Public Arbitrator

Signature Date

Richard C. Corse
Non-Public Arbitrator

Signature Date

10/10/05 H/C
Date of Service (For NASD Dispute Resolution use only)

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Concurring Arbitrators' Signatures

David A. Schuler
Public Arbitrator, Presiding Chairperson

Signature Date

Cecilia H. Morgan
Cecilia H. Morgan
Public Arbitrator

9/29/05
Signature Date

Richard C. Corse
Non-Public Arbitrator

Signature Date

10/10/05 Wca
Date of Service (For NASD Dispute Resolution use only)

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Richard C. Corse – Non-Public Arbitrator

Concurring Arbitrators' Signatures

David A. Schuler
Public Arbitrator, Presiding Chairperson

Signature Date

Cecilia H. Morgan
Public Arbitrator


Signature Date



Richard C. Corse
Non-Public Arbitrator

9-4-05

Signature Date

10/10/05 

Date of Service (For NASD Dispute Resolution use only)