

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Christine M. Porro, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and  
Stanley E. Edwards, Respondents

Case Number: 04-07259

Hearing Site: Phoenix, Arizona

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

**REPRESENTATION OF PARTIES**

For Claimant:

Bruce R. Heurlin, Esq.  
Karp, Heurlin & Weiss, P.C.  
Tucson, Arizona

For Respondents:

Kenneth C. Mennemeier, Esq.  
Mennemeier, Glassman & Stroud  
LLP  
Sacramento, California

**CASE INFORMATION**

Statement of Claim filed: October 12, 2004

Amended Statement of Claim filed: October 28, 2004

Claimant's Uniform Submission Agreement signed: November 30, 2004

Joint Statement of Answer filed by Respondents: February 25, 2005

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission  
Agreement signed: December 21, 2004

Respondent Stanley E. Edwards's Uniform Submission Agreement signed: January 28, 2005

### **CASE SUMMARY**

Claimant alleged breach of contract, breach of covenant of good faith and fair dealing, breach of NASD Rules of Fair Practice, and respondeat superior arising out of the sale of IDS Annuity and the re-investment of the funds into another annuity contract issued by the Equitable Annuity Life Assurance Society.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and set forth the following affirmative defenses: assumption of the risk, ratification, waiver, and estoppel.

### **RELIEF REQUESTED**

Claimant requested unspecified compensatory damages, disgorgement of commissions, pre- and post-judgment interest at the legal rate of 10% and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of all reference to the above captioned arbitration from Respondent Stanley E. Edwards' registration records maintained by the CRD, and costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties 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 pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents are liable to and shall pay Claimant compensatory damages in the sum of \$40,000.00.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
<b>Total Member Fees</b>	<b>= \$ 4,450.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1000.00/session	= \$ 1,000.00
Pre-hearing conference: April 26, 2005	1 session
(4) Hearing sessions @ \$1,000.00/session	= \$ 4,000.00
Hearings: November 21, 2005	2 sessions
November 22, 2005	2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 5,000.00</b>
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1. The Panel assessed \$2,500.00 of the forum fees Claimant.
2. The Panel assessed \$2,500.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Forum Fees</u>	= \$ 2,500.00
Total Fees	= \$ 2,750.00
<u>Less payments</u>	= \$(1,250.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,500.00</b>

2. Respondent Merrill Lynch, Pierce, Fenner & Smith is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
<u>Less payments</u>	= \$(4,450.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	= \$2,500.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$2,500.00</b>

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

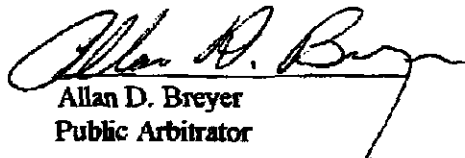
ARBITRATION PANEL

Richard D. Fincher	-	Public Arbitrator, Presiding Chair
Allan D. Breyer	-	Public Arbitrator
Ralph H. Martin, III	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Richard D. Fincher  
Chair, Public Arbitrator

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Signature Date

  
Allan D. Breyer  
Public Arbitrator

12-02-05  
Signature Date

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Ralph H. Martin, III  
Non-Public Arbitrator

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Signature Date

12/5/05  
Date of Service

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