

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

William Metzger

and

04-07758

Kansas City, Missouri

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Incorporated

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

William Metzger ("**Claimant**") was represented by Diane A. Nygaard, Esq., The Nygaard Law Firm, Leawood, Kansas.

Merrill Lynch Pierce Fenner & Smith Incorporated ("**Respondent or Merrill Lynch**") was represented by Bill P. Guest, Esq., Day Edwards Propester & Christensen PC, Oklahoma City, Oklahoma.

CASE INFORMATION

The Statement of Claim was filed on or about November 8, 2004. Submission Agreement of Claimant William Metzger was signed on November 4, 2004.

Statement of Answer was filed by Respondent Merrill Lynch Pierce Fenner & Smith Incorporated on or about January 14, 2005. Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith Incorporated was signed on December 7, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: negligence, violation of NASD Rules of Fair Practice, breach of contract, breach of fiduciary duty, and violation of Kansas Uniform Securities Act.

This case involves a broker-dealer who promised professional money management to its customer, and chose to subject that customer's retirement savings to unnecessary risk by

investing almost all of the customer's savings in risky stocks, primarily in foreign companies and technology-related companies.

Respondent denied the allegations set forth in the Statement of Claim. In its Answer, Respondent specifically stated as follows:

Metzger came to Merrill Lynch as a highly aggressive, high-risk investor whose investment strategy of concentrating his investments in a few stocks in a single sector succeeded during the bull run of the late 1990's and early 2000. Unfortunately for Claimant, his speculative trading strategy failed in the face of the sector-wide decline in 2000 and he suffered losses in his accounts—as did millions of other investors worldwide who did not have their accounts with Merrill Lynch. Predictably, as a noted jurist remarked in a case dismissing claims against a different broker-dealer, these types of allegations “come during the inevitable sequel after market boom periods.” (Lloyd v Morgan Stanley Dean Witter & Co., 2001 WL 959190 (S.D.N.Y.)) Thus, it is no surprise that Mr. Metzger would like to make Merrill Lynch the scapegoat for his losses – the only surprise is the frivolousness of his claims.

The evidence will show that Mr. Metzger had accumulated a portfolio of investments concentrated in the technology sector before he ever opened an account with Merrill Lynch. Mr. Metzger transferred that portfolio to Merrill Lynch in August of 2000, shortly before the technology laden NASDAQ declined 33% in the fourth quarter of 2000 and continued to decline throughout 2001. Mr. Metzger now wants to blame Merrill Lynch for losses in those investments, investments that Merrill Lynch never recommended. Mr. Metzger also seeks to blame Merrill Lynch for losses in accounts he established that were managed by independent money managers he selected. Essentially, Mr. Metzger waited more than three years after the last activity in his accounts to ask this panel to conclude that Merrill Lynch is liable to him for investments that no one from Merrill Lynch ever recommended to him because (ignoring the fact that he or the money manager he selected made those investment decisions) he now contends that they were unsuitable for him.

RELIEF REQUESTED

Claimant requested the arbitrators:

1. Order Merrill Lynch to compensate Claimant for his losses, pursuant to K.S.A. 17-1268(a). Based upon documents currently in our possession, such losses exceed \$900,000.
2. Order Merrill Lynch to compensate Claimant for all expenses, commissions and all fees paid Merrill Lynch. Based upon documents currently in our possession, at least \$27,014.68 in fees were paid by Mr. Metzger.
3. Order that Merrill Lynch pay all the expenses, including attorney's fees and costs, of this proceeding.
4. Order such other additional relief in accordance with Kansas statutory and common law.

Respondent requested that the claims asserted in this matter be denied in their entirety and that the Arbitration Panel assess the costs and fees incurred in this action against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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 the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, 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 Incorporated is liable for and shall pay to Claimant William Metzger the sum of \$10,824.00 (**Ten Thousand Eight Hundred Twenty Four Dollars and No Cents**) in compensatory damages.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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 = \$375.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Merrill Lynch Pierce Fenner & Smith Incorporated.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	7,000.00

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Date(s), October 18, 20 and 21, 2005 adjournment requested by Respondent = \$1,200.00
Fee waived by the Arbitration Panel.

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

1	Pre-hearing session(s) with Panel	x	1,200.00	\$	1,200.00
	March 14, 2005	1	session		
8	Hearing sessions	x	1,200.00	\$	9,600.00
	November 15, 2005	2	sessions		
	November 17, 2005	3	sessions		
	November 18, 2005	3	sessions		
	Total Forum Fees			\$	10,800.00

The Arbitration Panel has assessed \$5,400.00 of the forum fees to William Metzger.

The Arbitration Panel has assessed \$5,400.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith Incorporated.

Fee Summary

Claimant, William Metzger, is Hable for:

Initial Filing Fee	= \$	375.00
<u>Forum Fees</u>	= \$	5,400.00
Total Fees	= \$	5,775.00
<u>Less payments</u>	= \$	-1,575.00
Balance Due NASD Dispute Resolution	= \$	4,200.00

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

Member Fees	= \$	7,000.00
Forum Fees	= \$	5,400.00
Total Fees	= \$	12,400.00
Less payments	= \$	-7,000.00
Balance Due NASD Dispute Resolution	= \$	5,400.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Sandra E. Price, Esq. - Public Arbitrator, Presiding Chair
William L. Beedles, Ph.D - Public Arbitrator
Melford V. McCormick, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Sandra E Price
Sandra E. Price, Esq.
Public Arbitrator, Presiding Chair

12-25-05

Signature Date

William L. Beedles, Ph.D
Public Arbitrator

Signature Date

Melford V. McCormick, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
 Arbitration No. 04-07758
 Award Page 5 of 5

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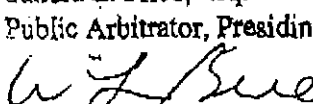
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 Public Arbitrator, Presiding Chair

 William L. Beedles, Ph.D.
 Public Arbitrator

Signature Date

12/27/05
 Signature Date

Melford V. McCormick, Esq.
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