

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Joseph W. Rader and Mildred A. Rader,
both Individually and as Trustees of their
Respective Trusts,

Claimants,

v.

Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Raymond James Financial Services, Inc.,
Respondents.

Case Number: 04-08240

Hearing Site: Indianapolis, Indiana

Nature of the Dispute: Customers vs. Member Firm

REPRESENTATION OF PARTIES

Joseph W. Rader and Mildred A. Rader (the "Raders"), hereinafter collectively referred to as "Claimants": Mark E. Maddox, Esq. and Thomas Caldwell, Esq. of Maddox Hargett & Caruso, P.C., located in Fishers, Indiana.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), hereinafter referred to as "Respondent": Anne N. DePrez, Esq. of Barnes & Thornburg, located in Indianapolis, Indiana.

Raymond James Financial Services, Inc. ("Raymond James"), hereinafter referred to as "Respondent": Terrance A. Bostic, Esq. of Raymond James, located in St. Petersburg, Florida.

CASE INFORMATION

Statement of Claim filed on or about: December 2, 2004

The Raders jointly signed the Uniform Submission Agreement: November 24, 2004

First Amended Statement of Claim: January 27, 2005

Statement of Answer filed by Merrill Lynch on or about: May 19, 2005

Merrill Lynch signed the Uniform Submission Agreement: March 14, 2005

Statement of Answer filed by Raymond James on or about: May 23, 2005

Raymond James signed the Uniform Submission Agreement: March 8, 2005

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, breach of fiduciary duty and constructive fraud, misrepresentations and omissions, suitability, negligence and Respondeat Superior. The causes of action relate to mutual funds such as Janus Mercury and Janus Olympus. Claimants asserted that these were volatile and over-aggressive, which did not meet their investments needs and objectives.

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

1. Many of the claims, including those alleging a violation of NASD rules and/or failure to supervise, have no foundation under Indiana law.
2. All of the claims premised on alleged negligence, breach of fiduciary duty or other torts are barred by the two-year statute of limitation found in Indiana Code § 34-11-2-4.
3. All of the Indiana Securities Act claims are barred by the three-year statute of limitation found in Indiana Code § 23-2-1-19.
4. The Raders ratified Respondent's conduct in connection with their accounts, have waived any claims and are estopped from seeking to recover any losses from Merrill Lynch.
5. The Raders contributory fault is greater than fifty percent of the total fault involved in causing their losses. In the alternative, their contributory fault was a proximate cause of the losses, and the damages, if any, should be diminished in proportion as the losses are attributable to their fault.
6. The Raders failed to mitigate their damages.

Unless specifically admitted in its Answer, Raymond James denied the allegations made in the Statement of Claim and asserted various affirmative defenses:

1. The claim is barred by the doctrines of ratification, waiver, estoppel, laches and mitigation.
2. The investments purchased at Raymond James were suitable for the stated investment objectives.
3. Claimants cannot recover for alleged violations of NASD and NYSE Rules.
4. There is no legal or factual basis for a claim of breach of fiduciary duty.
5. There is no legal or factual basis for a claim of fraud, deceit, misrepresentation or omission of material fact.
6. There is no legal or factual basis for the remaining claims.
7. There is no legal or factual basis for liability against Raymond James under the doctrine of respondeat superior or for failure to supervise.
8. Claimants were fully advised of and understood the nature of their investments.
9. Claimants failed to mitigate their damages through the continued maintenance and pursuit of their trading strategy.
10. Any losses were the result of market fluctuations and risks, which accompanied or occasioned a general market downturn that began in 2000, not by any act or omission by Raymond James. Claimants' knowingly acceptance of these risks bars any recovery.
11. Claimants did not rely to their detriment on any acts by Raymond James or their agents.
12. Claimants are not entitled to any recovery against Raymond James in this arbitration because Raymond James and its agents acted at all time in good faith and exercised reasonable diligence in their dealings with Claimants.
13. A Financial Advisor or broker-dealer is not a guarantor of the results or profitability of transactions in a customer's account.
14. Claimants have not incurred any damages arising from any actions by Raymond James.
15. Claimants' accounts were non-discretionary account in which they controlled their investments, exercised independent decision making authority, and therefore have sole responsibility for any market losses attributed to their investment decisions.
16. Raymond James faithfully followed Claimants' instructions and are not liable for any losses attributable to those instructions and decisions.

17. Claimants made various representations about their investment objectives. Raymond James reasonably relief upon those representations and Claimants are now estopped from recovery on the basis of allegations which are inconsistent with those representations.
18. Claimants' action is barred by the applicable Indiana statute of limitations.

RELIEF REQUESTED

Claimants requested \$275,365.00 in compensatory damages, pre and post judgment interest at 8% per year, costs, including NASD filing fees, expert witness fees, attorney's fees, and such other and further relief as may be deemed just, proper and equitable.

Merrill Lynch requested that all claims asserted against them be dismissed in their entirety, for costs and attorney's fees.

Raymond James requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On April 25, 2006, Claimant notified NASD that all claims against Respondent Raymond James have been settled, and that case should be dismissed against Raymond James.

AWARD

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

1. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for and shall pay to Claimants, Joseph W. Rader and Mildred A. Rader, the sum of \$40,000.00 as compensatory damages, plus interest at the rate of 8.00% per annum to accrue from May 10, 2006 until the date the award is paid in full.
2. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
3. 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, Inc. and Raymond James Financial Services, Inc. are parties and are both assessed the following fees:

Merrill Lynch, Pierce, Fenner & Smith, Inc.

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

Raymond James Financial Services, Inc.

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

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

Four (4) Hearing sessions @ \$1,125.00 = \$4,500.00

Hearing Dates: May 9, 2006 2 sessions
May 10, 2006 2 sessions

Total Forum Fees = \$4,500.00

1. The Panel has assessed 50% of the total forum fees in the amount of \$2,250.00 jointly to Claimants Joseph W. Rader and Mildred A. Rader.
2. The Panel has assessed 50% of the total forum fees in the amount of \$2,250.00 solely to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

1. Claimants, Joseph W. Rader and Mildred A. Rader, are jointly liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$2,250.00
Total Fees	= \$2,550.00
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$1,125.00

2. Respondent, Raymond James Financial Services, Inc., is solely liable for:

Member Fees	= \$5,200.00
<u>Less Payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Member Fees	= \$5,200.00
<u>Forum Fees</u>	= \$2,250.00
Total Fees	= \$7,450.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$2,250.00

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

ARBITRATION PANEL

Donald G. Russell	-	Public Arbitrator, Presiding Chairperson
Fred J. Naffziger, Esq.	-	Public Arbitrator
Thomas J. Ward, JD	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Donald G. Russell
Donald G. Russell
Public Arbitrator, Presiding Chairperson

5/17/06
Signature Date

/s/ Fred J. Naffziger, Esq.
Fred J. Naffziger, Esq.
Public Arbitrator

5/17/06
Signature Date

/s/ Thomas J. Ward, JD
Thomas J. Ward, JD
Non-Public Arbitrator

5/17/06
Signature Date

5/18/06
Date of Service (For NASD Dispute Resolution use only)

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Arbitration No. 04-08240
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Thomas J. Ward, JD	•	Non-Public Arbitrator

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Donald G. Russell
Public Arbitrator, Presiding Chairperson

May 17, 2006
Signature Date

Fred J. Naffziger, Esq.
Public Arbitrator

Signature Date

Thomas J. Ward, JD
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

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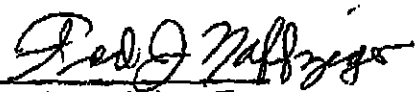
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