

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Lloyd H. Wright

and

Case Number: 04-08283  
Hearing Site: Houston, Texas

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

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**NATURE OF DISPUTE**

Customer v. Member

**REPRESENTATION OF PARTIES**

Lloyd H. Wright ("Wright" or "Claimant") was represented by Celeste M. Chiaramonte, Esq., Woska & Hayes, LLP, Kingwood, Texas.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch" or "Respondent") was represented by Benjamin J. Biard, Esq., Merrill Lynch Pierce Fenner & Smith, Inc., Miami, Florida.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 6, 2004. The Submission Agreement of Claimant was signed on or about November 29, 2004. Claimant's Response to Respondent's Motion to Dismiss and For More Definite Statement was filed on or about February 7, 2005. Claimant's Motion to Dismiss Without Prejudice was filed on or about May 2, 2005. Claimant's Response to Respondent's Motion to Dismiss With Prejudice was filed on or about May 19, 2005.

Respondent Merrill Lynch's Motion to Dismiss, Motion for More Definite Statement, in the Alternative, and Preliminary Statement of Answer was filed on or about April 8, 2005. The Submission Agreement of Respondent Merrill Lynch was signed on or about January 26, 2005, by Robert E. Goldberg, Esq. Respondent's Response to Claimant's Motion to Dismiss without Prejudice and Cross Motion for an Order Dismissing This Matter With Prejudice was filed on or about May 12, 2005.

### **CASE SUMMARY**

Claimant asserted the following causes of action: violation of Section 20(a) of the Exchange Act; breach of fiduciary duty; breach of contract; violation of Know Your Customer Rule; unsuitability; failure to diversify; failure to supervise; violation of the Securities Regulatory Rules; violation of the Texas Securities Statutes Act; violation of the Deceptive Trade Practices Act; and failure to hedge. Claimant alleged that Respondent recommended unsuitable securities investments, which resulted in losses to his savings.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant has failed to state a claim upon which relief may be granted; the claims of Claimant are barred in whole or in part by the applicable statutes of limitation; the claims are barred by the defenses of estoppel, waiver and laches; and all losses allegedly suffered by Claimant were proximately caused by Claimant's own conduct or negligence.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$140,000.00 in compensatory damages, punitive damages, interest, costs and attorneys' fees, and all other and further relief to which he may be entitled.

Respondent requested that the claims asserted against it be dismissed with prejudice, that the panel issue an order requiring Claimant to amend his Statement of Claim, and that it be awarded its costs and attorneys' fees, and such other and further relief as the panel deemed just and proper.

### **OTHER ISSUES CONSIDERED & DECIDED**

On July 12, 2005, the panel issued an order granting Respondent's Motion to Dismiss this proceeding with prejudice and denying all other requests for relief.

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 originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claim, each and all, against Respondent, Merrill Lynch Pierce Fenner & Smith Inc., are dismissed in their entirety with prejudice;
- 2) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby dismissed with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain 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. 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

#### **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 Panel x \$1,125.00	= \$1,125.00
Pre-hearing conferences: March 31, 2005      1 session	
July 12, 2005      1 session	
<hr/> Total Forum Fees	<hr/> = \$2,250.00

The Arbitration Panel has assessed \$1,125.00 of the forum fees to Lloyd H. Wright.

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**Fee Summary**

Claimant, Lloyd H. Wright, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,125.00
Total Fees	= \$1,425.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 6,325.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

**ARBITRATION PANEL**

Arno C. Schwethelm - Public Arbitrator, Presiding Chair  
James Mervin Benson, Jr., Esq. - Public Arbitrator  
John A. Dewald - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Arno C. Schwethelm  
Arno C. Schwethelm  
Public Arbitrator, Presiding Chair

07/13/05  
Signature Date

/s/ James Mervin Benson, Jr., Esq.  
James Mervin Benson, Jr., Esq.  
Public Arbitrator

07/14/05  
Signature Date

/s/ John A. Dewald  
John A. Dewald  
Non-Public Arbitrator

07/13/05  
Signature Date

07/15/05  
Date of Service (For NASD office use only)

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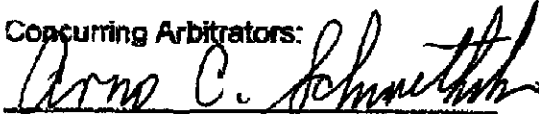
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Signature Date

July 13, 2005

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