

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

William Gregory Cavin and William Boyer Cavin

and

Case Number: 04-08333
Hearing Site: Houston, Texas

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

NATURE OF DISPUTE

Customers v. Member Firm

REPRESENTATION OF PARTIES

William Gregory Cavin and William Boyer Cavin ("Claimants") were represented by Kirk G. Smith, Esq., Shepherd, Smith & Edwards, L.L.P., Houston, Texas.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill" or "Respondent") was represented by Keith Guilfoyle, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about December 7, 2004. The Submission Agreement of Claimants, William Gregory Cavin and William Boyer Cavin, was signed on or about November 11, 2004. Claimants' Amended Statement of Claim was filed on or about December 19, 2005.

Respondent's Preliminary Answer and Motion for a More Definite Statement of Claim was filed by Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., on or about February 3, 2005. The Submission Agreement of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., was signed on or about January 31, 2005 by Robert E. Goldberg.

Claimants' Response to Respondent's Motion for More Definite Statement of Claim was filed on or about March 3, 2005.

Respondent's Reply in Further Support of their Motion for More Definite Statement of Claim was filed on or about March 8, 2005.

Claimant's Reply to Respondent's Response was filed on or about March 9, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract; promissory estoppel; violation of the Texas Deceptive Trade Practices Consumer Protection Act; violation of the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78(a); violation of the Texas Securities Act; violation of the Texas Fraud St., Sec. 27.01 of the Texas Business and Commerce Code; breach of fiduciary duty; and intentional and negligent misrepresentations. The causes of action related to the recommendations and purchase of stocks such as Exxon Mobile, H & R Block, and CISCO Systems, Inc. Claimants alleged that Respondent failed to diversify their portfolios and did not properly allocate assets, which led to substantial losses in their accounts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to state a cause of action upon which relief may be granted; Claimants cannot meet applicable burdens of proof; Respondent did not misrepresent or omit material facts; Claimants own actions or inaction caused any alleged damages; and all duties owed to Claimants were fully and faithfully performed.

RELIEF REQUESTED

Claimants requested an award in the amount of \$500,00.00 in compensatory damages, punitive damages, interest, costs, attorneys' fees and other relief the panel deemed just and proper.

Respondent requested that the claims asserted against it be denied in their entirety and other relief as the panel deemed just and proper.

OTHER ISSUES CONSIDERED & DECIDED

On or about November 23, 2005, the Panel made a ruling granting Respondent's Motion for a More Definite Statement of Claim.

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 NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, 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, Inc., is liable for and shall pay to Claimants, William Gregory Cavin and William Boyer Cavin, the sum of \$60,000.00 in compensatory damages;
- 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 attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee 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:

| | |
|---|---------------------|
| One (1) Pre-hearing session with Panel x \$1,125.00 | = \$1,125.00 |
| Pre-hearing conference: April 18, 2005 1 session | |
| Three (3) Hearing sessions x \$1,125.00 | = \$3,375.00 |
| Hearing Dates: January 24, 2006 2 sessions | |
| January 25, 2006 1 session | |
| Total Forum Fees | = \$4,500.00 |

The Arbitration Panel has assessed \$2,250.00 of the forum fees jointly and severally to William Gregory Cavin and William Boyer Cavin.

The Arbitration Panel has assessed \$2,250.00 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

Claimants, William Gregory Cavin and William Boyer Cavin, are jointly and severally liable for:

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

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

| | |
|--|----------------------|
| Member Fees | = \$ 5,200.00 |
| Forum Fees | = \$ 2,250.00 |
| Total Fees | = \$ 7,450.00 |
| <u>Less payments</u> | <u>= \$ 5,200.00</u> |
| 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

Patricia R. Lykos, JD - Public Arbitrator, Presiding Chair
William Edward Buck, JD - Public Arbitrator
Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Patricia R. Lykos, JD
Patricia R. Lykos, JD
Public Arbitrator, Presiding Chair

01/30/06
Signature Date

/s/ William Edward Buck, JD
William Edward Buck, JD
Public Arbitrator

01/27/06
Signature Date

/s/ Nick Sacaris
Nick Sacaris
Non-Public Arbitrator

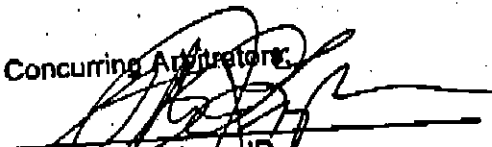
01/28/06
Signature Date

01/31/06
Date of Service (For NASD office use only)

ARBITRATION PANEL

Patricia R. Lykos, JD - Public Arbitrator, Presiding Chair
William Edward Buck, JD - Public Arbitrator
Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators:


Patricia R. Lykos, JD
Public Arbitrator, Presiding Chair

William Edward Buck, JD
Public Arbitrator

Nick Sacaris
Non-Public Arbitrator

Date of Service (For NASD office use only)

1/30/06

Signature Date

Signature Date

Signature Date

ARBITRATION PANEL

Patricia R. Lykos, JD - Public Arbitrator, Presiding Chair
William Edward Buck, JD - Public Arbitrator
Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators:

Patricia R. Lykos, JD
Public Arbitrator, Presiding Chair

William Edward Buck
William Edward Buck, JD
Public Arbitrator

Signature Date

1/27/06
Signature Date

Nick Sacaris
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

Patricia R. Lykos, JD - Public Arbitrator, Presiding Chair
William Edward Buck, JD - Public Arbitrator
Nick Sacaris - Non-Public Arbitrator


Concurring Arbitrators:

Patricia R. Lykos, JD
Public Arbitrator, Presiding Chair

Signature Date

William Edward Buck, JD
Public Arbitrator

Signature Date



Nick Sacaris
Non-Public Arbitrator

1-28-06

Signature Date

Date of Service (For NASD office use only)