

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Nana A. Barwise

and

Case Number: 05-00162
Hearing Site: Houston, Texas

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

NATURE OF DISPUTE

Customer v. Member Firm

REPRESENTATION OF PARTIES

Nana A. Barwise ("Claimant") was represented by Ryan K. Bakhtiari, Esq., Aldikoff, Uhl & Bakhtiari, Beverly Hills, California.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Respondent") was represented by Edwin A. Zipf, Esq., Bressler, Amery & Ross, PC, Florham Park, New Jersey.

CASE INFORMATION

The Statement of Claim was filed on or about January 11, 2005. The Submission Agreement of Claimant, Nana A. Barwise, was signed on or about December 9, 2004.

The Statement of Answer was filed by Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., on or about July 11, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, suitability, misrepresentations, unauthorized trading, violations of the federal securities laws, and the Texas Deceptive Trade Practices Act. The causes of action related to the recommendation and purchase of various unspecified securities. Claimant alleged that Respondent over concentrated her assets into equities and failed to invest her money in any income-producing securities to provide for her need for income. Also, Claimant alleged that Respondent concentration of her mutual fund portfolio in Class B shares were unsuitable based on her investment objectives.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Respondent did not breach any duty to Claimant imposed by operation of law or contract; the transactions in the accounts were appropriate and consistent with the Claimant's desires and objectives; and Claimant's claims are barred by the doctrines of laches, waiver, ratification and estoppel.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$390,000.00
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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.) Claimant's claims, each and all, are hereby denied and dismissed 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 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 persons 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 Arbitrator 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:

Two (2) Decisions on discovery-related motions on the papers
with single arbitrator @ \$200.00 = \$ 400.00

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference: October 25, 2005 1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$ 1,125.00
Pre-hearing conference: May 3, 2005 1 session

Seven (7) Hearing sessions x \$1,125.00 = \$ 7,875.00
Hearing Dates: January 9, 2006 2 sessions

	January 10, 2006	2 sessions	
	January 11, 2006	2 sessions	
	January 12, 2006	1 session	
<hr/> Total Forum Fees			= \$ 9,850.00

The Arbitration Panel has assessed \$9,425.00 of the forum fees to Nana A. Barwise.

The Arbitration Panel has assessed \$425.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

Claimant, Nana A. Barwise, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 9,425.00
<hr/> Total Fees	= \$ 9,725.00
Less payments	= \$ 1,425.00
<hr/> Balance Due NASD Dispute Resolution	= \$ 8,300.00

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

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 425.00
<hr/> Total Fees	= \$ 5,625.00
Less payments	= \$ 5,200.00
<hr/> Balance Due NASD Dispute Resolution	= \$ 425.00

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

ARBITRATION PANEL

Larry J. Craddock, J.D. - Public Arbitrator, Presiding Chair
Donald H. Dilmore, Sr. - Public Arbitrator
Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Larry J. Craddock, J.D.
Larry J. Craddock, J.D.
Public Arbitrator, Presiding Chair

February 1, 2006
Signature Date

/s/ Donald H. Dilmore, Sr.
Donald H. Dilmore, Sr.
Public Arbitrator

February 2, 2006
Signature Date

/s/ Nick Sacaris
Nick Sacaris
Non-Public Arbitrator

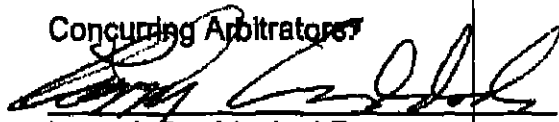
February 2, 2006
Signature Date

February 2, 2006
Date of Service (For NASD office use only)

ARBITRATION PANEL

Larry J. Craddock, J.D. - Public Arbitrator, Presiding Chair
Donald H. Dillmore, Sr. - Public Arbitrator
Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators



Larry J. Craddock, J.D.
Public Arbitrator, Presiding Chair

07/01/06

Signature Date

Donald H. Dillmore, Sr.
Public Arbitrator

Signature Date

Nick Sacaris
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

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Donald H. Dilmore, Sr. - Public Arbitrator
Nick Sacaris - Non-Public Arbitrator

Concurring Arbitrators:

Larry J. Craddock, J.D.
Public Arbitrator, Presiding Chair

Signature Date

Donald H. Dilmore
Donald H. Dilmore, Sr.
Public Arbitrator

2/2/06
Signature Date

Nick Sacaris
Non-Public Arbitrator

Signature Date

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