

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 05-00628

Philip L. Risley
Carol S. Risley

Name of the Respondent

Hearing Site: Charlotte, North Carolina

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Nature of the Dispute: Customers vs. Member.

REPRESENTATION OF PARTIES

Claimants Philip L. Risley and Carol S. Risley, hereinafter collectively referred to as "Claimants", were represented by John B. Veach III and H. Naill Falls, Jr., Falls & Veach, Asheville, NC.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), hereinafter referred to as "Respondent", was represented by Julie Wilson Portera and Kathryn R. Elridge, Maynard, Cooper & Gale, P.C., Birmingham, AL.

CASE INFORMATION

Statement of Claim filed on January 19, 2005.

Claimants signed the Uniform Submission Agreement on January 17, 2005.

Statement of Answer filed by Respondent on April 8, 2005.

A representative of Respondent executed the Uniform Submission Agreement on February 25, 2005.

Claimants filed a Motion to Change Venue on June 14, 2005.

CASE SUMMARY

Claimants asserted the following causes of action, among others: failure to act with reasonable care, honesty, and disclosure; violation of suitability rule and securities law; common law fraud, fiduciary breach, and negligence; and *respondeat superior*. The causes of action relate to the purchase of Merrill Lynch STRIDES.

Unless specifically admitted in its Answer, Respondent denied the allegations

made in the Statement of Claim and asserted the following defenses, among others: equitable doctrine of laches; statute of limitations; waiver, ratification, and estoppel; failure to state a claim upon which relief may be granted; alleged losses were unforeseeable; assumption of risk; untimely complaint; failure to mitigate damages; authorization and approval of all transactions; no breach of duties; no intent to defraud; no misrepresentation or omission of material facts; accounts were suitable; no breach of contractual obligations; no liability under *respondeat superior* or vicarious liability; and contributory and/or comparative negligence.

RELIEF REQUESTED

Claimants in their Statement of Claim requested: compensatory damages in excess of \$350,000.00, interest, attorneys' fees, punitive damages and such other and further relief as may be just and proper.

Respondent in its Statement of Answer requested: dismissal of the Statement of Claim, assessment of all costs and forum fees against Claimants; and such other and further relief as may be just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Panel granted Motion to Change Venue on July 21, 2005.

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.

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. All claims against Respondents are denied in their entirety;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent is a party.

Member surcharge	= \$	1,700.00
Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	2,750.00
Total Member Fees	= \$	5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

March 7-9, 2006, adjournment by Claimants	= \$	1,125.00
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1. The Panel has assessed \$ 1,125.00 of the adjournment fees to Claimants.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with Panel @ \$ 1,125.00	= \$	1,125.00
Pre-hearing conference: June 14, 2005 1 session		
Four (4) Hearing sessions @ \$ 1,125.00	= \$	4,500.00
Hearing Dates: June 27, 2006 2 sessions		
June 28, 2006 2 sessions		
Total Forum Fees	= \$	5,625.00

1. The Panel has assessed \$ 2,812.50 of the forum fees to Claimant.

2. The Panel has assessed \$ 2,812.50 of the forum fees to Respondent.

FEE SUMMARY

1. Claimants are assessed and shall pay the following fees:

Initial Filing Fee	= \$	300.00
Adjournment Fee	= \$	1,125.00

Forum Fees	= \$	2,812.50
Total Fees	= \$	4,237.50
Less payments	= \$	3,675.00
Balance Due NASD Dispute Resolution	= \$	562.50

3. Respondent is assessed and shall pay the following fees:

Member Fees	= \$	5,200.00
Forum Fees	= \$	2,812.50
Total Fees	= \$	8,012.50
Less payments	= \$	5,200.00
Balance Due NASD Dispute Resolution	= \$	2,812.50

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

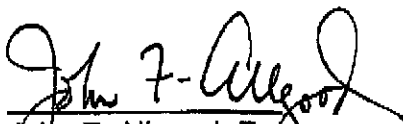
ARBITRATION PANEL

Benjamin F. Richards, Jr.	-	Public Arbitrator, Presiding Chairperson
John F. Allgood, Esq.	-	Public Arbitrator, Panelist
James W. A. Black	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Benjamin F. Richards, Jr.
Public Arbitrator, Presiding Chairperson

Signature Date


John F. Allgood, Esq.
Public Arbitrator, Panelist

7/10/06
Signature Date

James W. A. Black
Non-Public Arbitrator, Panelist

Signature Date

July 12, 2006
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Benjamin F. Richards, Jr.

Benjamin F. Richards, Jr.
Public Arbitrator, Presiding Chairperson

10 July 2006
Signature Date

John F. Allgood, Esq.
Public Arbitrator, Panelist

Signature Date

James W. A. Black
Non-Public Arbitrator, Panelist

Signature Date

July 12 2006
Date of Service (For NASD Dispute Resolution office use only)