

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Lynn and Sharon Leazer

and

05-00669
Kansas City, Missouri

Name of Respondent

Merrill Lynch Pierce Fenner & Smith

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Lynn and Sharon Leazer ("Claimants") were represented by Jeff Musselwhite, Esq. and Darrell Steidley, Esq., Woska & Hayes, LLP, Kingwood, Texas.

Merrill Lynch Pierce Fenner & Smith ("Respondent") was represented by Bill Powell Guest, Esq. and David Newsom, Esq., Day Edwards Propester & Christensen PC, Oklahoma City, Oklahoma.

CASE INFORMATION

The Statement of Claim was filed on or about February 7, 2005. Submission Agreement of Claimant Lynn and Sharon Leazer was signed on January 7, 2005.

Statement of Answer was filed by Respondent Merrill Lynch Pierce Fenner & Smith on or about . Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith was signed on February 24, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; breach of contract; violation of know your customer rule; unsuitability; failure to diversify; failure to supervise; violations of state and federal securities laws; various common law claims; and failure to hedge. Claimant summarized the claim as follows:

As described below, this is a case of negligence, misrepresentations, and grossly unsuitable investment recommendations by Respondent to an inexperienced investor, which resulted in losses in Mrs. Rodriguez's investments that ultimately destroyed his savings.

The Investment Advisors Act of 1940 was the last in a series of acts designed to eliminate certain abuses in the securities industry, which were found to have contributed to the stock market crash of 1929 and the depression of the 1930s. It was preceded by the Securities Act of 1933, the Securities Exchange Act of 1934, ... and the Investment Company Act of 1940. A fundamental purpose, common to these statutes, was to substitute the philosophy of full disclosure for the philosophy of *caveat emptor* and thus, to achieve a high standard of business ethics in the securities industry.

Specifically, Claimant stated, in part:

Claimants told Respondent on numerous occasions to be careful since they had entrusted their savings with them.

Sadly, Respondent was not careful with their retirement savings. Respondent failed to use even basic diversification strategies of using separate classes to reduce investment risk. Respondent recklessly recommended an investment strategy consisting entirely of equities. Respondent created a portfolio featuring speculative technology/internet stocks and risky Defined Asset Funds. Respondent's negligent actions soon caused devastating losses to Claimants' retirement savings.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated:

The Leazers came to Merrill Lynch in the midst of one of the biggest market crashes in the history of the United States stock market. Although the Leazers now assert after-the-fact claims that Merrill Lynch is to blame for the losses in their accounts, a review of the surrounding objective record shows that their claims are misplaced. The Leazers came to Merrill Lynch in early May of 2000, just as the stock market was beginning a dramatic and prolonged two and a half year decline. The Leazers only stayed at Merrill Lynch for a seventeen month period, transferring all of their assets away from Merrill Lynch in mid-October of 2001. The simple fact is that the Leazers' short time at Merrill Lynch coincided with one of the most brutal periods in the history of the U.S. economy.

RELIEF REQUESTED

Claimants requested that the Arbitration Panel order Respondent to pay them damages in excess of \$375,000, including but not limited to:

- A. All direct losses in the accounts;
- B. All charges to the accounts;
- C. The lost earnings that the accounts would have earned if they had been properly invested;

- D. Pre-judgment and post-judgment interest at the maximum statutory rate on all losses sustained from the date of the transactions until the date of the award by the Arbitration Panel pursuant to Missouri law;
- E. All cost of these proceedings, including forum fees, hearing session fees and costs in bringing this action to protect Claimants' rights and best interests;
- F. Reasonable attorney fees in bringing this action under Missouri statutory law and common law as well as under the NASD and NYSE Rules of Fair Practice. Claimants also request costs and expenses including expert witness fees, in an amount to be determined at the arbitration hearing;
- G. Punitive damages to be assessed by the Arbitration Panel to ensure the investing public that, in the future, Respondent and their financial consultants will conduct their affairs to the highest integrity required of financial advisors; and
- H. That Claimant be granted all other and further relief to which they may be entitled.

Respondent requested that the Panel deny the Claim in its entirety and assess the costs and fees incurred in the defense of this action against the Claimants.

OTHER ISSUES CONSIDERED & DECIDED

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 the NASD Dispute Resolution (the "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. On all counts the Panel finds for the Respondent.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Merrill Lynch Pierce Fenner & Smith.

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

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers.. A hearing 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:

1 Pre-hearing session(s) with Panel	@	1,125.00	\$	1,125.00
June 7, 2005	1	session		
5 Hearing sessions	@	1,125.00	\$	5,625.00
January 31, 2006	3	sessions		
February 1, 2006	2	sessions		
Total Forum Fees			\$	6,750.00

The Arbitration Panel has assessed \$6,187.50 of the forum fees to Lynn and Sharon Leazer.
The Arbitration Panel has assessed \$562.50 of the forum fees to Merrill Lynch Pierce Fenner & Smith.

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Fee Summary

Claimant: Lynn and Sharon Leazer are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	6,187.50
Total Fee:	= \$	6,487.50
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	5,062.50

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

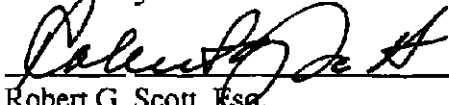
Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	562.50
Total Fee:	= \$	5,762.50
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	562.50

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Robert G. Scott, Esq. - Public Arbitrator, Presiding Chair
 Stephen D. Kort, Esq. - Public Arbitrator
 John W. Jones, CFP - Non-Public Arbitrator

Concurring Arbitrators:


 Robert G. Scott, Esq.
 Public Arbitrator, Presiding Chair

2.16.6
 Signature Date

 Stephen D. Kort, Esq.
 Public Arbitrator

 Signature Date

 John W. Jones, CFP
 Non-Public Arbitrator

 Signature Date

 Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 05-00669
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John W. Jones, CFP - Non-Public Arbitrator

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Robert G. Scott, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Stephen E. Kort, Esq.
Public Arbitrator

23 February 2006
Signature Date

John W. Jones, CFP
Non-Public Arbitrator

Signature Date

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Signature Date

Stephen D. Kort, Esq.
Public Arbitrator

Signature Date

John W. Jones, CFP
Non-Public Arbitrator

Signature Date

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