

**Award
NASD Dispute Resolution**

COPY

In the Matter of the Arbitration Between:

James Tantillo and Mary Tantillo JTWROS, and Mary E. Tantillo IRA, Claimants v. Brandon T. York, Dorothy J. Gorton and Merrill Lynch, Pierce, Fenner & Smith Incorporated, Respondents

Case Number: 05-00797

Hearing Site: San Francisco, California

Nature of the Dispute: Customers vs. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimants:

James and Mary Tantillo
Milpitas, California

For Respondents:

Stephen Lau, Esq.
Mennemeier, Glassman
& Stroud LLP
Sacramento, California

CASE INFORMATION

Statement of Claim filed: February 8, 2005

Claimants' Uniform Submission Agreement signed: March 1, 2005

Joint Statement of Answer filed by Respondents Brandon T. York, Dorothy J. Gorton and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"): April 4, 2005

Respondent Brandon T. York's Uniform Submission Agreement signed: April 4, 2005

Respondent Dorothy J. Gorton's Uniform Submission Agreement signed: April 4, 2005

Respondent Merrill Lynch's Uniform Submission Agreement signed: April 4, 2005

CASE SUMMARY

Claimants alleged that they suffered damages in the amount of \$750.00 because of Respondent's misrepresentations regarding the closing fee charged to Claimants' account in connection with the Merrill Lynch Unlimited Advantage program associated with Claimants' account.

Respondents denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested damages in the amount of \$750.00 plus costs and interest at the statutory rate of 10%.

Respondents requested that Claimants' Statement of Claim be dismissed with prejudice, and requested that Claimants be directed to pay all applicable forum costs and expenses. Respondents also requested such other and further relief as the Panel deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

On March 21, 2005, Claimants signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims by Claimants are dismissed.
- 2) Respondent Merrill Lynch is solely liable for and shall pay to Claimants, the sum of \$25.00 as reimbursement for Claimants' filing fee.
- 3) Except as mentioned in paragraph two above, each party shall bear its own costs, including attorney's fees.
- 4) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 25.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, Merrill Lynch is a party and the following fees are assessed:

Member Surcharge	= \$150.00
Total Member Fees	= \$150.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with a single arbitrator @ \$25.00/session	= \$25.00
Pre-hearing conference: June 17, 2005	1 session

(1) Hearing session @ \$25.00/session	= \$25.00
Hearing: October 18, 2005	1 session

Total Forum Fees	= \$50.00
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The Panel assessed the \$50.00 in forum fees jointly and severally to Respondents Brandon T. York, Dorothy J. Gorton and Merrill Lynch.

Fee Summary

1. Claimants James Tantillo and Mary Tantillo JTWROS, and Mary E. Tantillo IRA are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 25.00
Less Payments	= \$(50.00)
Refund Due Claimants	= \$(25.00)

2. Respondent Merrill Lynch is charged with the following fees and costs:

Member Fees	= \$ 150.00
<u>Less Payments</u>	<u>= \$(150.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Brandon T. York, Dorothy J. Gorton and Merrill Lynch are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 50.00
<u>Less Payments</u>	<u>= \$(0.00)</u>
Balance Due NASD Dispute Resolution	= \$ 50.00

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

ARBITRATION PANEL

William Michael Samsel

Public Arbitrator, Presiding Chair

Presiding Arbitrator's Signature



William Michael Samsel
Chair, Public Arbitrator

10/27/05
Signature Date

10/28/05
Date of Service