

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant

Mary S. Traylor

Case Number: 05-00920

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Nashville, TN

Nature of the Dispute: Customer v. Member.

REPRESENTATION OF PARTIES

Claimant, Mary S. Traylor, hereinafter referred to as "Claimant", was represented by Ronald C. Koksall, Esq., Butler, Vines & Babb, PLLC, Knoxville, Tennessee.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent", was represented by Bradley B. Rounsaville, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on February 22, 2005.

Claimant signed the Uniform Submission Agreement on January 31, 2005.

Statement of Answer filed by Respondent on May 18, 2005.

Amended Statement of Answer filed by Respondent on July 5, 2005.

Respondent did not file a Uniform Submission Agreement with NASD Dispute Resolution.

CASE SUMMARY

Claimant asserted the following causes of action, among others: suitability, breach of trust, breach of fiduciary duty, negligence, violations of Tennessee code section 48-2-121 (a)(2), fraudulent and negligent misrepresentations, fraud, and deceit. The causes of action relate to the handling of her account by Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant's claims are barred by the doctrines of waiver, ratification, acquiescence, laches, and estoppel; Claimant's claims are barred by the statute of limitations; contributory negligence; assumption of the risk; failure to mitigate damages; and failure to state a claim upon which relief may be granted.

RELIEF REQUESTED

In the Statement of Claim Claimant requested:

Compensatory Damages	\$ 500,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that the Statement of Claim be denied in all respects and that costs of this proceeding be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitration Panel (the "Panel") on all issues submitted.

At the close of Claimant's presentation of the evidence, Respondent made an oral Motion for Directed Verdict. The Panel denied the motion.

On April 27, 2006 following the close of the hearings, the Panel ordered the parties to submit information relating to expert witness costs. Claimant provided the information as requested by the Panel and Respondent filed an objection to the Panel's order. On May 11, 2006, the Panel reviewed both Claimant and Respondent's arguments relating to this objection and found that Respondent's arguments in this matter were properly raised and argued. Therefore, the Panel sustains Respondent's objection to the April 27, 2006 order relating to expert witness costs and the order is thus rescinded.

The parties 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. Respondent is liable to and shall pay to Claimant the sum of \$10,000.00 in compensatory damages based on the claims for violations of Tennessee code section 48-2-121 (a)(2) and common law negligence. No interest is awarded on this amount;
2. Claimant's claims for suitability, breach of trust, breach of fiduciary duty, fraudulent and/or negligent misrepresentation, fraud and deceit are denied in their entirety;

3. Respondent is liable to and shall pay to Claimant the sum of \$300.00 in reimbursement for the initial-claim filing fee;
4. That the parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
5. That any and all relief not specifically addressed herein 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 firm that employed the associated person 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

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 the Panel @ \$ 1,125.00	= \$ 1,125.00
Pre-hearing conference: August 16, 2005 1 session	
Four (4) Hearing sessions @ \$ 1,125.00	= \$ 4,500.00
Hearing Dates: April 25, 2006 2 sessions	
April 26, 2006 2 sessions	
Total Forum Fees	= \$ 5,625.00

The Panel has assessed \$ 5,625.00 of the forum fees to Respondent.

Fee Summary

1. Claimant is assessed and shall pay:
Initial Filing Fee = \$ 300.00

Total Fees	= \$ 300.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Refund owed Claimant	= \$ 1,125.00

2. Respondent is assessed and shall pay:

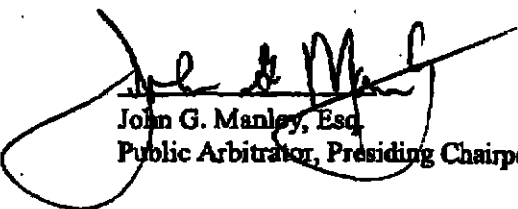
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 5,625.00</u>
Total Fees	= \$ 10,825.00
<u>Less payments</u>	<u>= \$ 6,530.49</u>
Balance Due NASD Dispute Resolution	= \$ 4,294.51

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

ARBITRATION PANEL

John G. Manley, Esq.	-	Public Arbitrator, Presiding Chairperson
Edward B. Scott	-	Public Arbitrator, Panelist
John C. Burch, Jr.	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures


John G. Manley, Esq.
Public Arbitrator, Presiding Chairperson

5-17-06
Signature Date

Edward B. Scott
Public Arbitrator, Panelist

Signature Date

John C. Burch, Jr.
Non-Public Arbitrator, Panelist

Signature Date

May 15, 2006
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

John G. Manley, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Edward B. Scott
Edward B. Scott
Public Arbitrator, Panelist

5-15-06
Signature Date

John C. Burch, Jr.
Non-Public Arbitrator, Panelist

Signature Date

May 15, 2006
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

John G. Manley, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Edward B. Scott
Public Arbitrator, Panelist

Signature Date


John C. Burch, Jr.
Non-Public Arbitrator, Panelist

5/12/06
Signature Date

May 15, 2006
Date of Service (For NASD Dispute Resolution office use only)