

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Lilia G. Sims-Horn, Individually and as
Trustee of the Lilia G. Sims-Horn Rev.
Trust Agreement U/A/D 04-18-96

and

Case Number: 05-00957
Hearing Site: Southfield, Michigan

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,
Kevin Thomas McCarthy,
H&R Block Financial Advisors, Inc., and
Christopher Lawrence Balcerowiak

NATURE OF DISPUTE

Customer v. Members and Associated Persons

REPRESENTATION OF PARTIES

Lilia G. Sims-Horn, Individually and as Trustee of the Lilia G. Sims-Horn Rev. Trust Agreement U/A/D 04-18-96 ("Claimant") was represented by Joseph H. Spiegel, Esq., Law Offices of Joseph H. Spiegel, P.C., Ann Arbor, Michigan.

Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Kevin Thomas McCarthy ("McCarthy") were represented by Clarence L. Pozza, Jr., and W. Scott Turnbull, Esq., Miller Canfield Paddock and Stone, PLC, Detroit, Michigan.

H&R Block Financial Advisors, Inc. ("HRBFA") and Christopher Lawrence Balcerowiak ("Balcerowiak") was represented by Donald P. Wray, Jr., Esq., H&R Block Financial Advisors, Inc., Detroit, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about February 23, 2005. The Submission Agreement of Lilia G. Sims-Horn, Individually and as Trustee of the Lilia G. Sims-Horn Rev.

Trust Agreement U/A/D 04-18-96 was signed on or about April 25, 2005. Claimant filed a More Definite Statement of Claim on or about December 12, 2005.

The Statement of Answer was filed by jointly Merrill Lynch Pierce Fenner & Smith, Inc. and Kevin Thomas McCarthy, on or about July 14, 2005. The Submission Agreement of Merrill Lynch Pierce Fenner & Smith, Inc. was signed on or about June 30, 2005.

The Statement of Answer was filed jointly by H&R Block Financial Advisors, Inc. and Christopher Lawrence Balcerowiak on or about December 15, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: liability under the 1934 Act anti-fraud provisions; violations of Sections 12 and 17 of the Securities Act of 1933, as amended; liability under the 1933 Act anti-fraud provisions; liability under Michigan blue sky law; common law fraudulent misrepresentation, negligent misrepresentation, and silent fraud; and breach of common law fiduciary duty.

Unless specifically admitted in their Answer, MLPFS and McCarthy denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the claims are barred by reason of Claimant's negligence; the claims are barred by reason of the doctrines of waiver, estoppel, laches and release; the claims are barred for the reason that Claimant failed to mitigate her damages.

Unless specifically admitted in their Answer, HRBFA and Balcerowiak denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's claims are barred by laches, waiver, estoppel and ratification; the alleged wrongdoing of which Claimant complains was perpetrated by an individual or entity other than HRBFA; and Claimant assumed the risk of her investment transactions and the investment losses incurred.

RELIEF REQUESTED

Claimant requested an award in the amount of \$450,000.00, plus interest, rescission, exemplary damages, costs, expenses, attorneys' fees and any other relief the panel deemed just and proper.

MLPFS and McCarthy requested that the claims asserted against them be dismissed with prejudice and any other relief the panel deemed just and proper.

HRBFA and Balcerowiak requested that the claims asserted against them be dismissed with prejudice and any other relief the panel deemed just and proper.

OTHER ISSUES CONSIDERED & DECIDED

Respondents HRBFA, Balcerowiak and McCarthy did not file with NASD Dispute Resolution properly executed submissions to arbitration, but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, and/or appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

Claimant settled her claims against Respondents Merrill Lynch Pierce Fenner & Smith, Inc., and Kevin Thomas McCarthy and dismissed MLPFS and McCarthy with prejudice from this matter on or about December 13, 2005.

At the hearing, Respondent Christopher Lawrence Balcerowiak requested that his CRD records be expunged of all references to this matter.

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 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;
- 3.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Christopher Lawrence Balcerowiak's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Christopher Lawrence Balcerowiak must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative finding of fact:

The claim, allegation, or information is false.

- 4.) 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 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 firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms are Merrill Lynch Pierce Fenner & Smith, Inc., and H&R Block Financial Advisors, Inc.

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 hearing session conducted. A hearing 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:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: October 5, 2005	1 session

Six (6) Hearing sessions x \$1,125.00 = \$6,750.00

Hearing Dates: December 15, 2005 2 sessions
March 14, 2006 2 sessions
March 15, 2006 2 sessions

Total Forum Fees = \$7,875.00

The Arbitration Panel has assessed \$3,937.50 of the forum fees to Lilia G. Sims-Horn, Individually and as Trustee of the Lilia G. Sims-Horn Rev. Trust Agreement U/A/D 04-18-96.

The Arbitration Panel has assessed \$3,937.50 of the forum fees jointly and severally to H&R Block Financial Advisors, Inc., and Christopher Lawrence Balcerowiak.

Fee Summary

Claimant, Lilia G. Sims-Horn, Individually and as Trustee of the Lilia G. Sims-Horn Rev. Trust Agreement U/A/D 04-18-96, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,937.50
Total Fees	= \$ 4,237.50
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 3,937.50

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

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 2,450.00
Balance Due NASD Dispute Resolution	= \$ 2,750.00

Respondent, H&R Block Financial Advisors, Inc., is liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, H&R Block Financial Advisors, Inc. and Christopher Lawrence Balcerowiak are jointly and severally liable for:

Forum Fees	= \$ 3,937.50
Total Fees	= \$ 3,937.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,937.50

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

ARBITRATION PANEL

Frederick R. Fordon - Public Arbitrator, Presiding Chair
Jerome D. Sobczak - Public Arbitrator
Nancy R. Papo - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Frederick R. Fordon
Frederick R. Fordon
Public Arbitrator, Presiding Chair

03/17/06
Signature Date

/s/ Jerome D. Sobczak
Jerome D. Sobczak
Public Arbitrator

03/17/06
Signature Date

/s/ Nancy R. Papo
Nancy R. Papo
Non-Public Arbitrator

03/17/06
Signature Date

03/17/2006
Date of Service (For NASD office use only)

03/17/06 FRI 14:05 FAX

NASD REGULATION

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ARBITRATION PANEL

Frederick R. Fordon - Public Arbitrator, Presiding Chair
Jerome D. Sobczak - Public Arbitrator
Nancy R. Papo - Non-Public Arbitrator

Concurring Arbitrators:

Frederick F. Fordon
Frederick R. Fordon
Public Arbitrator, Presiding Chair

3/17/06
Signature Date

Jerome D. Sobczak
Jerome D. Sobczak
Public Arbitrator

Signature Date

Nancy R. Papo
Nancy R. Papo
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution
Arbitration No. 05-00957
Award Page 6 of 6

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Frederick R. Fordon
Public Arbitrator, Presiding Chair

Jerome D. Sobczak
Jerome D. Sobczak
Public Arbitrator

Nancy R. Papo
Non-Public Arbitrator

Signature Date

3-17-06
Signature Date

Signature Date

Date of Service (For NASD office use only)

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NASD REGULATION

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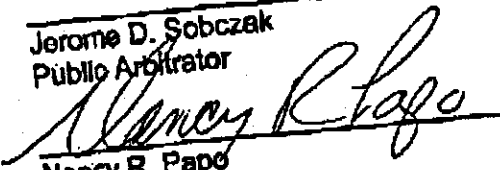
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Public Arbitrator, Presiding Chair

Jerome D. Sobczak
Public Arbitrator


Nancy R. Papo
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Signature Date

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