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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Sharon L. Hanneken

Case Number: 05-01354

Name of the Respondent  
Merrill Lynch Pierce Fenner & Smith, Inc.

Hearing Site: St. Louis, Missouri

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Nature of the Dispute: Customer vs. Member Firm

**REPRESENTATION OF PARTIES**

Sharon L. Hanneken ("Hanneken"), hereinafter referred to as "Claimant": Matthew J. Rossiter, Esq. of Rossiter & Jansky, LLC located in St. Louis, Missouri.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"), hereinafter referred to as "Respondent": Byron E. Francis, Esq. of Armstrong Teasdale, LLP located in St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: March 15, 2005  
Hanneken signed the Uniform Submission Agreement: February 11, 2005  
Motion for Leave to File First Amended Statement of Claim: January 30, 2006  
Motion in Limine filed: February 10, 2006

Statement of Answer filed by Respondent, Merrill Lynch Pierce, Fenner & Smith, Inc. on or about: May 5, 2005  
Merrill Lynch signed the Uniform Submission Agreement: May 26, 2005  
Response of Merrill Lynch to Hanneken's Motion to Amend Statement of Claim: February 2, 2006  
Merrill Lynch's Response to Hanneken's Motion in Limine filed: February 13, 2006

**CASE SUMMARY**

Hanneken asserted the following causes of action: suitability and failure to supervise. The causes of action relate to various securities including, Conseco High Yield Fund Class B; Eaton Vance High Income Class B; Merrill Lynch High Yield Class C; Gulf Investments; Lazard International; Laurel Capital Advisors; and Lord Abbett & Company.

Unless specifically admitted in its Answer, Merrill Lynch denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The claim fails to state a cause of action upon which relief may be granted.
2. The Respondent did not guarantee Claimant any specific level of return on his investments and indeed put Claimant on notice that the contemplated investment strategies for her accounts could result in substantial losses.
3. No conduct on the part of the Respondent was the proximate cause of the "losses" claimed by Claimant.
4. Any "losses" of principal sustained by Claimant resulted solely from the vagaries and volatility of the securities market over which the Respondent had no control, and not from any alleged wrongdoing on the part of Respondent.
5. To the extent Claimant may have sustained damages, such damages were caused, in whole or in part, by the culpable conduct, fault, assumption of risk, negligence, intentional acts and/or other action or inaction on the part of Claimant and are, therefore, not recoverable from the Respondent.
6. Respondent did not at any time with *scienter* or with any intent to harm the financial interests of the Claimant and indeed did not harm those interests.
7. To the extent Claimant may have sustained damages, such damages were caused, in whole or in part, by the culpable conduct, fault assumption of risk, negligence, intentional acts and/or action or inaction on the part of third parties over which Respondent had no authority or control and are, therefore, not recoverable from the Respondent.
8. All actions by Respondent were fully consistent with laws, rules, regulations and standards of conduct applicable in the circumstances.
9. Any and all duties owed to Claimant were fully and faithfully performed.
10. As a matter of law, the Respondent had no fiduciary duties to Claimant, because the Consults Accounts were managed by a third-party.
11. Claimant failed to mitigate her alleged damages, if any.
12. Merrill Lynch had in place adequate supervisory procedures, which it reasonably and diligently implemented and followed at all relevant times.
13. As a matter of fact and law, Claimant is not entitled to attorney's fees or punitive damages.
14. The applicable statutes of limitations and/or the doctrine of laches bars Claimant's claims, in whole or in part, as against the Respondent.
15. If they made any actionable misrepresentations of fact (and they did not), the Respondent did not know such representations were false when made and exercised reasonable care in determining their accuracy.
16. Claimant's Consults Services Client Agreement bars this action, at least as regards the Consults Account.
17. Claimant's accounts were handled in accordance and in compliance with applicable brokerage industry standards and guidelines and all regulatory requirements.
18. Claimant's claims are barred by documentary evidence.

### **RELIEF REQUESTED**

Claimant requested \$366,055.31 in compensatory damages; punitive damages; costs in the amount of \$18,000.00; and attorney's fees in excess of \$35,000.00, including pre-award and post-award interest.

Respondent, Merrill Lynch, requested dismissal of the Statement of Claim in its entirety and with prejudice; costs, expenses and attorney's fees; and such other and further relief as is just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

In an Order dated February 3, 2006, the Panel granted Claimant's Motion for Leave to file First Amended Statement of Claim.

In an Order dated February 14, 2006, the Panel denied Claimant's Motion in Limine subject to Claimant's right to make further objection at trial as to ongoing investment program of Claimant, if desired and appropriate.

### **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. Any and all claims asserted by Claimant, Sharon L. Hanneken, are denied.
2. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch Pierce Fenner & Smith, Inc. is a party to this proceeding.

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 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 @ \$1,125.00	= \$1,125.00
Pre-hearing conference: July 26, 2005 1 session	

Six (6) Hearing sessions @ \$1,125.00	= \$6,750.00
Hearing Dates: February 15, 2006 2 sessions	
February 16, 2006 2 sessions	
February 17, 2006 2 sessions	

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Total Forum Fees	= \$7,875.00
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1. The Panel has assessed 50% of the total forum fees in the amount of \$3,937.50 solely to Claimant Sharon L. Hanneken.
2. The Panel has assessed 50% of the total forum fees in the amount of \$3,937.50 solely to Respondent Merrill Lynch Pierce Fenner & Smith, Inc.

### **Fee Summary**

1. Claimant, Sharon L. Hanneken, is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$3,937.50
Total Fees	= \$4,237.50
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$2,812.50

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

Member Fees	= \$5,200.00
Forum Fees	= \$3,937.50
Total Fees	= \$9,137.50
Less payments	= \$5,200.00
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**

George T. Mehan, Jr.	-	Public Arbitrator, Presiding Chairperson
Marilyn T. Selby, JD	-	Public Arbitrator
Hugh V. Murray	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ George T. Mehan, Jr.  
George T. Mehan, Jr.  
Public Arbitrator, Presiding Chairperson

2/28/06  
Signature Date

/s/ Hugh V. Murray  
Hugh V. Murray  
Non-Public Arbitrator

2/27/06  
Signature Date

**Dissenting Arbitrator's Signature**

/s/ Marilyn T. Selby, JD  
Marilyn T. Selby, JD  
Public Arbitrator

2/27/06  
Signature Date

2/28/06  
Date of Service (For NASD Dispute Resolution use only)

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NASD (Dispute Resolution)

Arbitration No. 05-01334

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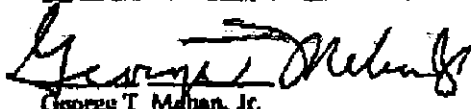
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Marilyn T. Selby, JD

Hugh V. Murray

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**


George T. Mehan, Jr.  
Public Arbitrator, Presiding Chairperson

*February 28, 2006*  
Signature Date

Hugh V. Murray  
Non-Public Arbitrator

Signature Date

**Dissenting Arbitrator's Signature**

Marilyn T. Selby, JD  
Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution

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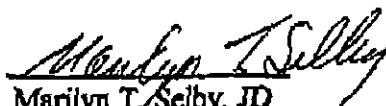
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