

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

John D. Wade, Sr. IRA vs. Merrill Lynch, Pierce, Fenner & Smith, Inc., John M. Jones and Virgil L. Underwood.

Case Number: 05-01369

Hearing Location: Charleston, W V

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

REPRESENTATION OF PARTIES

Claimant, John D. Wade, Sr. IRA, hereinafter referred to as "Claimant", was represented by Shawn P. George, Esq., George & Lorensen, PLLC, Charleston, West Virginia.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), John M. Jones ("Jones"), and Virgil L. Underwood ("Underwood"), hereinafter collectively referred to as "Respondents", were represented by Carranza M. Pryor, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about March 15, 2005.

Claimant signed the Uniform Submission Agreement on March 27, 2005.

Statement of Answer filed by Respondents on May 25, 2005.

Respondent Jones signed the Uniform Submission Agreement on May 10, 2005.

Respondent Underwood signed the Uniform Submission Agreement on May 16, 2005.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on May 26, 2005.

CASE SUMMARY

Claimant asserted the following causes of action, among others: negligence, breach of contract, common law fraud and violations of W.VA. Code § 32-410 and W.VA. Code § 46-6-101, *et seq.*, and breach of fiduciary duty. The causes of action relate to unspecified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: the Statement of Claim fails to state a claim upon which relief may be granted; the Statement of Claim is barred by the equitable doctrines of laches, unclean hands, or estoppel; comparative and/or contributory negligence; Claimant authorized, directed and ratified all of the transactions in his account; assumption of the risk; failure to mitigate damages; statutes of limitations; and Claimant's claims are barred by the

economic loss rule.

RELIEF REQUESTED

Claimant in his Statement of Claim requested:

Compensatory Damages	\$250,000.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed in its entirety and that forum fees and costs be assessed against Claimant.

OTHER ISSUES CONSIDERED AND 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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitration Panel (the "Panel") has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Merrill Lynch, Jones and Underwood are jointly and severally liable to and shall pay to Claimant compensatory damages in the amount of \$250,000.00, plus interest on that amount. Interest shall be at 10% and calculated on a simple basis and shall accrue from October 31, 2000 through the date the Award is paid in full;
2. All claims for punitive damages and attorneys' fees are denied in their entirety;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. 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

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 person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences: August 22, 2005	1 session
November 17, 2005,	1 session

Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: June 27, 2006	2 sessions
June 28, 2006	2 sessions

Total Forum Fees	= \$6,750.00
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1. The Panel has assessed \$6,750.00 of the forum fees jointly and severally to Respondents.

EEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Refund Due Claimant	= \$1,125.00

2. Respondent Merrill Lynch is assessed and shall pay the following fees:

<u>Member Fees</u>	= \$5,200.00
Total Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 00.00

3. Respondents are jointly and severally assessed and shall pay the following fees:

<u>Forum Fees</u>	= \$6,750.00
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Total Fees	= \$6,750.00
<u>Less payments</u>	<u>= \$ 00.00</u>
Balance Due NASD Dispute Resolution	= \$6,750.00

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

ARBITRATION PANEL

Charles Edward Hurt, J.D.	-	Public Arbitrator, Presiding Chairperson
Christopher Lee Howard	-	Public Arbitrator, Panelist
Bert Cliff	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Charles Edward Hurt, J.D.
Public Arbitrator, Presiding Chairperson

Signature Date

Christopher Lee Howard
Public Arbitrator, Panelist

Signature Date

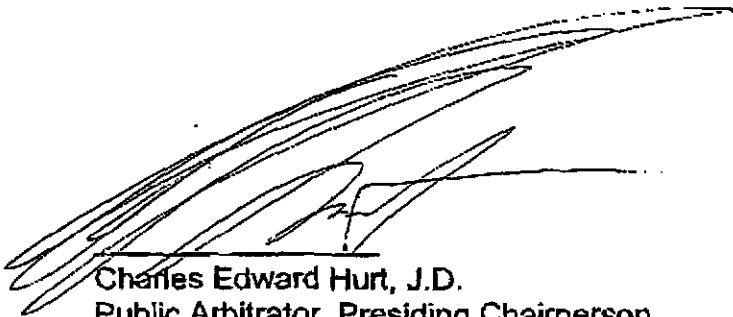
Bert Cliff
Non-Public Arbitrator, Panelist

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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Charles Edward Hurt, J.D.
Public Arbitrator, Presiding Chairperson

7/13/06
Signature Date

Christopher Lee Howard
Public Arbitrator, Panelist

Signature Date

Bert Cliff
Non-Public Arbitrator, Panelist

Signature Date

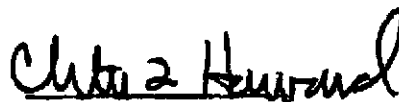
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07/06/2006 16:14 FAX 202 728 8082 NASD

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Bert Cliff
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7-6-06
Signature Date

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