

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Norma C. Worden, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated and John A. Stanbery, Respondents

Case Number: 05-01377

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Richard J. Edson, Esq.
Law Offices of Richard J. Edson
Sacramento, California

For Respondents:

Eric J. Glassman, Esq.
Mennemeier, Glassman & Stroud LLP
Sacramento, California

CASE INFORMATION

Statement of Claim filed: March 8, 2005

Claimant's Uniform Submission Agreement signed: January 7, 2005

Joint Statement of Answer filed by Respondents: May 31, 2005

Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated's Uniform Submission Agreement signed: April 1, 2005

Respondent John A. Stanbery's Uniform Submission Agreement signed: August 15, 2005

CASE SUMMARY

Claimant alleged breach of fiduciary duty, unsuitability, negligence, violation of NASD and NYSE rules, and failure to supervise. Claimant's allegations involved the use of margin, the liquidation of Washington Mutual Fund shares, and subsequent purchase of unspecified stocks identified only as being primarily in the technology sector.

Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$221,839.00 in compensatory damages, pre- and post-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of all reference to the above captioned arbitration from Respondent John A. Stanbery's registration records maintained by the NASD Central Registration Depository, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety.
- 2) Respondent John A. Stanbery's request for the Panel to recommend expungement of all reference to the above captioned arbitration from his registration records maintained by the NASD Central Registration Depository is denied.
- 3) Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated and John A. Stanbery are jointly and severally liable to and shall pay Claimant the sum of \$300.00 as reimbursement for filing fees.

- 4) Except for paragraph 3, the parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

FEEES

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	= \$ 300.00
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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, the member firm Merrill Lynch, Pierce, Fenner & Smith, Incorporated is a party and the following fees are assessed:

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 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 or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: August 8, 2005 1 session	
Six (6) Hearing sessions @ \$1,125.00/session	= \$6,750.00
Hearings: January 31, 2006 2 sessions	
February 1, 2006 2 sessions	
February 2, 2006 2 sessions	
Total Forum Fees	= \$7,875.00

The Panel assessed the entire balance of the forum fees, in the amount of \$7,875.00, jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated and John A. Stanbery.

Fee Summary

1. Claimant Norma C. Worden is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Refund due from NASD Dispute Resolution	= \$(1,125.00)

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated and John A. Stanbery are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	<u>= \$ 7,875.00</u>
Balance Due NASD Dispute Resolution	= \$ 7,875.00

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


ARBITRATION PANEL

Peter D. Steinbroner
Elliott Zachary Seff
Thomas J. Doherty


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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


Peter D. Steinbroner
Chair, Public Arbitrator

Feb. 3, 2006
Signature Date


Elliott Zachary Seff
Public Arbitrator

February 3, 2006
Signature Date

Thomas J. Doherty
Non-Public Arbitrator

Signature Date

February 3, 2006
Date of Service

ARBITRATION PANEL

Peter D. Steinbroner
Elliott Zachary Seff
Thomas J. Doherty

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Peter D. Steinbroner
Chair, Public Arbitrator

Signature Date

Elliott Zachary Seff
Public Arbitrator

Signature Date


Thomas J. Doherty
Non-Public Arbitrator

2/3/2006
Signature/Date

February 3, 2006
Date of Service