

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Mildred V. Fullford, Trustee

Case Number: 05-01561

Names of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.
Richard Sane

Hearing Site: Orlando, FL

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

REPRESENTATION OF PARTIES

For Mildred V. Fullford, Trustee, hereinafter referred to as "Claimant": Robert Dyer, Esq., Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., Orlando, FL.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Richard Sane ("Sane"), hereinafter collectively referred to as "Respondents": Gary Langan Goodenow, Esq., Office of General Counsel, MLPFS, Miami, FL.

CASE INFORMATION

Statement of Claim filed on or about: March 21, 2005.
Claimant signed the Uniform Submission Agreement: March 17, 2005.
Amendment to Complaint filed by Claimant on or about: May 19, 2005.
Statement of Answer filed by Respondents on or about: May 31, 2005.
Respondent MLPFS signed the Uniform Submission Agreement: May 26, 2005.
Respondent Sane signed the Uniform Submission Agreement: May 26, 2005.
Claimant's Motion for Appropriate Sanctions Against Respondent ("Motion for Sanctions") filed on or about: October 16, 2006.
Respondent MLPFS's response to the Motion for Sanctions filed on or about: October 16, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: violations of state and federal common law of fraud; breach of contract; breach of fiduciary duty; unsuitability; and, negligent supervision. The causes of action relate to the purchase in Claimant's account of various mutual funds, including the following: MFS Utilities Fund; Munder NetNet Fund; Mass. Investors Trust; ML Large Cap Fund; and, MFS High Income Fund.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of approximately \$75,000.00, plus all costs for bringing this action.

Respondents requested that the undersigned arbitrators (the "Panel") dismiss the Statement of Claim in its entirety, with prejudice, recommend that all references to this matter be expunged from Respondent Sane's NASD Central Registration Depository records, and award such other and further relief as deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about November 17, 2005, the parties filed a joint stipulation dismissing Respondent Sane from this matter, with prejudice.

During the evidentiary hearing, the Panel denied Claimant's Motion for Sanctions.

During the evidentiary hearing, Claimant referred to previous confidential negotiations between the parties. The Panel did not discuss this issue and it had no bearing on the Panel's decision.

During the evidentiary hearing, Claimant's counsel withdrew Claimant's claims for violation of the federal securities statute, breach of contract, and negligent supervision. Claimant left the parallel suitability claims for violation of §517.301(1) Fla. Stat. and breach of fiduciary duty for the Panel's consideration.

At the close of the evidentiary hearing, Respondent MLPFS stated it did not have a full and fair opportunity to be heard due to the Panel's decision to expeditiously proceed with the evidentiary hearing prior to the conclusion of appellate proceedings concerning the first Award rendered in this matter. The Panel noted that the evidentiary hearing was held at this time due to the advanced age of the Claimant.

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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent MLPFS is liable for unsuitability and shall pay to Claimant compensatory damages in the sum of \$55,800.00, pre-judgment interest specifically excluded.

Respondent MLPFS is liable and shall pay to Claimant the sum of \$225.00, representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Claimant is the prevailing party with reference to the suitability claim.

Any and all relief not specifically addressed herein, including Claimant's claim for breach of fiduciary duty, is denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure ("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	= \$225.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MLPFS is a party and member firm.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed during these proceedings.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were assessed during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 @ \$750.00/session = \$ 750.00
Pre-hearing conference: July 27, 2006 1 session

Six (6) Hearing sessions @ \$750.00/session = \$4,500.00
Hearing Dates: October 17, 2006 2 sessions
October 18, 2006 2 sessions
October 19, 2006 2 sessions

Total Forum Fees = \$5,250.00

The Panel has assessed the total forum fees of \$5,250.00 to Respondent MLPFS.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Total Fees	= \$ 225.00
Less payments	= \$ 225.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

Forum Fees	= \$5,250.00
Member Fees	= \$3,550.00
Total Fees	= \$8,800.00
Less payments	= \$7,105.00
Balance Due NASD Dispute Resolution	= \$1,695.00

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

ARBITRATION PANEL

Thomas Joseph Atkinson, Sr., J.D.	-	Public Arbitrator, Presiding Chairperson
Elwin Lawrence Saviet	-	Public Arbitrator
Michael D. Walsh	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Thomas Joseph Atkinson, Sr., J.D.
Public Arbitrator, Presiding Chairperson

Signature Date

/s/
Elwin Lawrence Saviet
Public Arbitrator

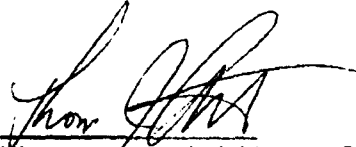
Signature Date

/s/
Michael D. Walsh
Non-Public Arbitrator

Signature Date

October 25, 2006
Date of Service (For NASD Dispute Resolution use only)

Concurring Arbitrators' Signatures



Thomas Joseph Atkinson, Sr., J.D.
Public Arbitrator, Presiding Chairperson

10-25-06
Signature Date

Elwin Lawrence Saviet
Public Arbitrator

Signature Date

Michael D. Walsh
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

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Concurring Arbitrators' Signatures

Thomas Joseph Atkinson, Sr., J.D.
Public Arbitrator, Presiding Chairperson

Signature Date


Elwin Lawrence Saviet
Public Arbitrator

10/24/08
Signature Date

Michael D. Walsh
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

Concurring Arbitrators' Signatures

Thomas Joseph Atkinson, Sr., J.D.
Public Arbitrator, Presiding Chairperson

Signature Date

Elwin Lawrence Saviet
Public Arbitrator

Signature Date



Michael D. Walsh
Non-Public Arbitrator

10/24/06
Signature Date

Date of Service (For NASD Dispute Resolution use only)