

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Marilyn V. Dietz (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc. (Respondent)

Case Number: 05-01581

Hearing Site: Cleveland, Ohio

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

Claimant Marilyn V. Dietz hereinafter referred to as "Claimant": Christopher R. Fehr, Esq., Simmons Cooper LLC. Previously represented by Nicholas P. Iavarone, Esq., Simmons Cooper LLC, East Alton, IL.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. hereinafter referred to as "Respondent": Tara A. LaClair, Esq. and Kelly Callahan, Esq., Day, Edwards, Propester & Christensen, P.C., Oklahoma City, OK. Previously represented by Bill Powell Guest, Esq., Day, Edwards, Propester & Christensen, P.C., Oklahoma City, OK.

CASE INFORMATION

Statement of Claim filed on or about: March 28, 2005.

Claimant signed the Uniform Submission Agreement: March 16, 2005.

Statement of Answer filed by Respondent on or about: June 2, 2005.

Respondent signed the Uniform Submission Agreement: May 21, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: failure to supervise, breach of fiduciary duty, breach of contract, violation of the Securities Exchange Act and violation of the Ohio Securities Act. The causes of action relate to equities and equity based mutual funds.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$98,000.00, interest, attorney's fees, punitive damages and damages and costs.

Respondent requested dismissal of the Statement of Claim in its entirety and that the costs and fees incurred in this action 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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby denied in their entirety.
2. 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 = \$ 225.00

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 event giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

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

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 arbitrators including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with single arbitrator @ \$450.00/session	= \$ 1,350.00
Pre-hearing conferences:	
December 5, 2005	1 session
April 13, 2006	1 session
April 14, 2006	1 session

One (1) Pre-hearing session with Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference:	
September 2, 2005	1 session

Five (5) Hearing sessions with Panel @ \$750.00/session	= \$ 3,750.00
Hearing Dates:	
April 19, 2006	3 sessions

April 20, 2006

2 sessions

Total Forum Fees = \$ 5,850.00

1. The Panel has assessed \$2,925.00 of the forum fees to Claimant.
2. The Panel has assessed \$2,925.00 of the forum fees to Respondent.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 2,925.00
Total Fees	= \$ 3,150.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,725.00

2. Respondent is solely liable for:

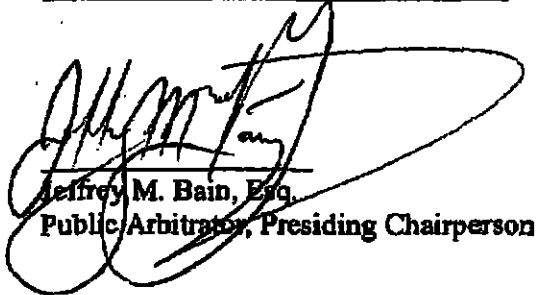
Member Fees	= \$ 3,550.00
<u>Forum Fees</u>	= \$ 2,925.00
Total Fees	= \$ 6,475.00
<u>Less payments</u>	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 2,925.00

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

ARBITRATION PANEL

Jeffrey M. Bain, Esq.	-	Public Arbitrator, Presiding Chairperson
Jason C. Blackford, Esq.	-	Public Arbitrator
Jay S. Ferrier	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Jeffrey M. Bain, Esq.
Public Arbitrator, Presiding Chairperson

April 30, 2006
Signature Date

Jason C. Blackford, Esq.
Public Arbitrator

Signature Date

Jay S. Ferrier
Non-Public Arbitrator

Signature Date

May 1, 2006
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Jeffrey M. Bain, Esq.	-	Public Arbitrator, Presiding Chairperson
Jason C. Blackford, Esq.	-	Public Arbitrator
Jay S. Ferrier	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Jeffrey M. Bain, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Jason C. Blackford, Esq.
Public Arbitrator

Signature Date



Jay S. Ferrier
Non-Public Arbitrator

4/27/06

Signature Date

May 1, 2006
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Jeffrey M. Bain, Esq.	-	Public Arbitrator, Presiding Chairperson
Jason C. Blackford, Esq.	-	Public Arbitrator
Jay S. Ferrier	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Jeffrey M. Bain, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Jason C. Blackford, Esq.
Public Arbitrator

MAY 1, 2006

Signature Date

Jay S. Ferrier
Non-Public Arbitrator

Signature Date

May 1, 2006

Date of Service (For NASD Dispute Resolution use only)