

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Margie Osborne, individually and as
Beneficiary of the Margie Osborne IRA
and of the Margie Osborne IRRA; and,
Marshall Williams, Individually and as
Beneficiary of the Marshall Williams IRA,

Case Number: 05-01826

Name of the Respondent

Merrill Lynch, Pierce, Fenner
& Smith Incorporated

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customers vs. Member Firm

REPRESENTATION OF PARTIES

Claimants Margie Osborne, individually and as Beneficiary of the Margie Osborne IRA and of the Margie Osborne IRRA and Marshall Williams, Individually and as Beneficiary of the Marshall Williams IRA hereinafter collectively referred to as "Claimants": Gregory Simon, Esq., of the firm of SimmonsCooper, LLC, located in East Alton, Illinois.

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated, hereinafter referred to as "Respondent": Jenkins & Gilchrist, located in Dallas, Texas.

CASE INFORMATION

Statement of Claim filed: April 7, 2005.

Claimant s both signed the Uniform Submission Agreement: March 31, 2005.

Statement of Answer and Affirmative Defenses, and Motion to Strike Portions of the Statement of Claim filed by Respondent on: June 16, 2005.

Respondent signed the Uniform Submission Agreement: April 22, 2005.

Claimants' Objection to and Response to Respondent's Motion to Strike Portions of the Statement of Claim filed: June 21, 2006.

Respondent's Pre-Hearing Brief filed on: June 19, 2006.

Claimants' Response to Respondent's Pre-Hearing Brief filed on: June 30, 2006.

CASE SUMMARY

Claimants asserted the following causes of action: violation of the Texas Deceptive Practices-Consumer Fraud Act; breach of fiduciary duty; breach of contract; violation of the Securities Exchange Act; violation of the Texas Securities Act; and, negligence. These causes of action related to Respondent's recommendation and purchase of Class B mutual fund shares and an annuity for Claimants' accounts.

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

1. Merrill Lynch was not the proximate cause of Claimants' alleged losses;
2. Claimants were contributorily negligent;
3. Any right of recovery is limited by the doctrine of comparative responsibility;
4. Claimants' claims are barred by the equitable doctrine of laches;
5. Claimants assumed the risk of the market;
6. Claimants' losses, if any, were market losses that were not caused by Merrill Lynch and for which Merrill Lynch should not be held liable;
7. Claimants failed to timely notify Merrill Lynch, either orally or in writing, of complaints arising out of their accounts and, therefore, waived, ratified and are estopped from asserting these claims;
8. Claimants, through their conduct and representations, are estopped from now asserting that the investments were unsuitable;
9. After being fully informed, Claimants expressly agreed with the investments made in their accounts and such conduct constitutes a waiver of Claimants, claims;
10. Claimants failed to mitigate their alleged damages and, in addition, affirmatively incurred damages for which they are solely responsible;
11. Claimants assumed the risks of the investments they made through Merrill Lynch, and through their unilateral decisions regarding when to purchase and whether to hold such securities;
12. Merrill Lynch conducted itself in a professional manner, did not breach any duties owed Claimants, and acted in good faith and without knowledge of any wrongdoing or improper activity in their accounts;
13. Merrill Lynch did not act with any intent to defraud Claimants or with any willful disregard for them;
14. Merrill Lynch did not misrepresent or omit material facts;
15. The transactions upon which the Claimants base their alleged claims against Merrill Lynch were conducted in accordance with all applicable exchange and SRO rules and regulations;
16. Any and all duties owed to Claimants were fully and faithfully performed;
17. Merrill Lynch had in place adequate supervisory procedures that it reasonably implemented and followed;

18. Claimants' claims are barred, in whole or in part, by the applicable statute of limitations;
19. Claimants are not entitled to attorneys' fees as a matter of law;
20. Merrill Lynch denied that it engaged in any conduct in violation of the applicable state securities laws or any other principles of common law;
21. Merrill Lynch denied that it engaged in any conduct in violation of the federal securities laws or any of the rules promulgated thereunder;
22. Merrill Lynch denied that under the facts of this case it owed a fiduciary duty to Claimants;
23. Merrill Lynch denied all claims for damages (including punitive damages), interest, attorneys' fees, costs and expenses;
24. Merrill Lynch denies liability under theories of *respondeat superior* or vicarious liability and denies that it was negligent or breached any contractual obligations with respect to Claimants; and,
25. Merrill Lynch acted in good faith and, accordingly, cannot be held liable as a control person under Section 20(a) of the Securities Exchange Act of 1934, 17 U.S.C. §78t(a)(2001).

RELIEF REQUESTED

Claimants Margie Osborne, individually and as Beneficiary of the Margie Osborne IRA and of the Margie Osborne IRRA and Marshall Williams, Individually and as Beneficiary of the Marshall Williams IRA requested:

Compensatory Damages	In excess of \$500,000
Mental Anguish Damages	\$1,500,000
Punitive Damages	\$6,000,000
Interest	Pre-award interest pursuant to the Texas Securities Act and the Texas Deceptive Practices-Consumer Fraud Act
Attorneys' Fees	Pursuant to the Texas Securities Act and the Texas Deceptive Practices-Consumer Fraud Act
Other Costs	Pursuant to the Texas Securities Act and the Texas Deceptive Practices-Consumer Fraud Act
Other Monetary/Non-Monetary Relief if any:	As the Panel believed just and within their authority.

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated requested that the Panel enter an award as follows:

1. Dismissing the Statement of Claim in its entirety without any award of damages;
2. Awarding Merrill Lynch the cost of this proceeding, including reasonable

- attorneys' fees; and,
3. Awarding Merrill Lynch such other and further relief as the Panel believes is proper.

OTHER ISSUES CONSIDERED AND DECIDED

On July 6, 2006, the Panel heard and considered argument in regard to Respondent's Motion to Strike Portions of the Statement of Claim. The Panel determined that:

1. The Motion to Strike references to other broker's (non-Merrill Lynch) policies and procedures was granted; and
2. The Motion to Strike Exhibit A was denied.

After the Claimant completed their case at hearing, Respondent presented a Motion to Dismiss. After consideration of the arguments of counsel, the Panel denied that Motion, but stipulated that the Respondent did not need to present a defense against the fraud charges because Claimant did not present any evidence to support the fraud charges.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the pre-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is liable for and shall pay to Claimant Margie Osborne, individually and as Beneficiary of the Margie Osborne IRA and of the Margie Osborne IRRA, the sum of \$11,000.00 as compensatory damages;
2. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is liable for and shall pay to Claimant Marshall Williams, Individually and as Beneficiary of the Marshall Williams IRA, the sum of \$5,000.00 as compensatory damages;
3. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated in this decision; and,
4. 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 = \$ 600.00

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 Incorporated is a party and the following member fees are assessed:

Member surcharge = \$ 3,350.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 5,500.00

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 @ \$1,200.00 = \$ 2,400.00
Pre-hearing conferences:
 October 5, 2005 1 session
 July 6, 2006 1 session
Six (6) Hearing sessions @ \$1,200.00 = \$ 7,200.00
Hearing Dates:
 July 11, 2006 2 sessions
 July 12, 2006 2 sessions
 July 13, 2006 2 sessions

Total Forum Fees = \$ 9,600.00

The Panel has assessed \$4,800.00 of the forum fees, jointly and severally, to Claimants Margie Osborne, individually and as Beneficiary of the Margie Osborne IRA and of the Margie Osborne IRRA and Marshall Williams, Individually and as Beneficiary of the Marshall Williams IRA. The remaining \$4,800.00 of the forum fees the Panel has assessed to Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated.

FEE SUMMARY

Claimants Margie Osborne, individually and as Beneficiary of the Margie Osborne IRA and of the Margie Osborne IRRA and Marshall Williams, Individually and as Beneficiary of the Marshall Williams IRA are jointly and severally liable for:

Initial Filing Fee = \$ 600.00
Forum Fees = \$ 4,800.00

Total Fees = \$ 5,400.00
Less payments = \$ 1,800.00

Balance Due NASD Dispute Resolution = \$ 3,600.00

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is solely liable for:

Member Fees	= \$ 9,600.00
Forum Fees	= \$ 4,800.00
Total Fees	= \$14,400.00
Less payments	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00

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

ARBITRATION PANEL

C. Sumpter Logan - Public Arbitrator, Presiding Chairperson
Sanford D. Sanes - Public Arbitrator
Ned B. Young - Non-Public Arbitrator

Concurring Arbitrators' Signatures

C. Sumpter Logan
Public Arbitrator, Presiding Chairperson

Signature Date

Sanford D. Sanes
Public Arbitrator

Signature Date

Ned B. Young
Non-Public Arbitrator

Signature Date

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

07/21/2006 09:12 FAX

NASD

07/21/06

NASD Dispute Resolution

Arbitration No. 05-01826

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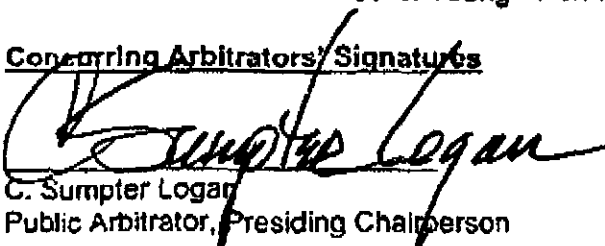
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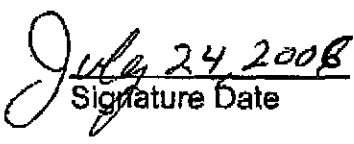
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