

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Claire Germano (Claimant) vs. Merrill Lynch Pierce Fenner & Smith, Inc., and John Crooks (Respondents)

Case Number: 05-01858

Hearing Site: Boston, Massachusetts

Nature of the Dispute:

Initial Claim: Customer vs. Member and Associated Person.

Cross-Claim: Member v. Associated Person.

REPRESENTATION OF PARTIES

Claimant Claire Germano hereinafter referred to as "Claimant": Kevin G. Diamond, Esq., Shea & Diamond, Holliston, MA.

Respondent Merrill Lynch Pierce & Smith, Inc., hereinafter referred to as "Merrill Lynch": Sonia Skinner, Esq., and Michael A. Fitzhugh, Esq., Fitzhugh, Parker & Alvaro LLP, Boston, MA.

Respondent John Crooks hereinafter referred to as "Crooks": Frank J. Liberty, Esq., The Liberty Law Firm, LLC, New London, CT.

CASE INFORMATION

Statement of Claim filed on or about: April 7, 2005.

Claimant signed the Uniform Submission Agreement: February 24, 2005.

Statement of Answer and Cross Claim filed by Merrill Lynch on or about: June 3, 2005.

Merrill Lynch signed the Uniform Submission Agreement: April 15, 2005.

Statement of Answer filed by Crooks on or about: July 7, 2005.

Statement of Answer to Cross Claim by Crooks filed on or about: November 20, 2005.

Crooks signed the Uniform Submission Agreement: June 16, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: violation of Massachusetts Securities Act; violation of Massachusetts Insurance and Annuity laws and unfair methods of competition and unfair or deceptive acts or practices; violation of Massachusetts common law; violation of NASD conduct rules; violation of Massachusetts consumer protection statute; fraud; negligence;

breach of contract; breach of fiduciary duty; respondeat superior; misrepresentations; and omissions.

The causes of action relate to the purchase of mutual funds outside of the "Endeavor Variable Annuity" product.

Unless specifically admitted in its Answer, Merrill Lynch denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In its Cross Claim, Merrill Lynch asserted the following causes of action: breach of employment contract, negligence, fraud, and other tortious conduct, contribution, and indemnification.

Unless specifically admitted in his Answer, Crooks denied the allegations made in the Statement of Claim.

Unless specifically admitted in his Answer, Crooks denied the allegations made in the Cross Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested unspecified compensatory, punitive, treble and consequential damages; reimbursement of filing and forum fees; attorneys' fees in the amount of at least \$50,000.00; and such other relief as the Panel deems just and proper.

Merrill Lynch requested that the Statement of Claim be dismissed in its entirety with prejudice; award of attorneys' fees; and such other and further relief as it deems just and proper. In the alternative, Merrill Lynch requested that any award be limited to the damages Claimant sustained from initial investment up to November 2001, and, in its Cross-Claim, sought contribution or indemnification by Mr. Crooks.

Crooks requested that the Statement of Claim and Cross Claim be dismissed in their entirety with prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearing Respondent Merrill Lynch made a Motion for Directed Verdict with respect to Claimant's fraud and breach of fiduciary duty claims. After due deliberation, the Panel denied this Motion.

During the hearing, Respondent Crooks made a Motion to Submit a Response Brief. After due deliberation, the Panel denied this Motion.

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. Respondents Merrill Lynch and Crooks are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$62,225.00 plus interest at the rate of 6% per annum from February 1, 2003 until the date of payment of the Award.
2. Respondent Crooks is liable for and shall pay to Respondent Merrill Lynch compensatory damages in the amount of \$31,113.00 plus interest at the rate of 6% per annum from February 1, 2003 until the date of payment of the Award.
3. Respondents Merrill Lynch and Crooks are jointly and severally liable for and shall pay Claimant \$250.00 to reimburse Claimant for the non-refundable filing fee previously paid to NASD Dispute Resolution.
4. Any and all relief not specifically addressed herein, including punitive, treble, and consequential 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	= \$ 250.00
Cross-claim filing fee	= \$ 500.00

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, Inc., is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$ 2,200.00
Total Member fees	= \$ 4,450.00

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:

One (1) Decision on discovery-related motion on the papers with One (1) arbitrator @ \$200.00 Respondent Merrill Lynch submitted One (1) discovery-related motion	= \$ 200.00
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One (1) Pre-hearing session with single arbitrator @ \$450.00 Pre-hearing conference: November 29, 2005 1 session	= \$ 450.00
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One (1) Pre-hearing sessions with Panel @ \$1,000.00 per session Pre-hearing conference: September 12, 2005 1 session	= \$ 1,000.00
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Six (6) Hearing sessions @ \$1,000.00 per session		= \$ 6,000.00
Hearing Dates:	December 20, 2005	2 sessions
	December 21, 2005	2 sessions
	December 22, 2005	2 sessions
Total Forum Fees		= \$ 7,650.00

1. The Panel has assessed \$3,825.00 of the forum fees to Respondent Merrill Lynch.
2. The Panel has assessed \$3,825.00 of the forum fees to Respondent Crooks.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 250.00
Total Fees	= \$ 250.00
<u>Less payments</u>	= \$ 1,425.00
Refund due Claimant	= \$ 1,175.00

In accordance with the Award section above, Respondents are jointly and severally liable for and shall pay to Claimant \$250.00 to reimburse Claimant for the non-refundable filing fee previously paid to NASD Dispute Resolution.

2. Merrill Lynch is solely liable for:

Cross-Claim Filing Fee	= \$ 500.00
Member Fees	= \$ 4,450.00
<u>Forum Fees</u>	= \$ 3,825.00
Total Fees	= \$ 8,775.00
<u>Less payments</u>	= \$ 6,650.00
Balance Due NASD Dispute Resolution	= \$ 2,125.00

3. Crooks is solely liable for:

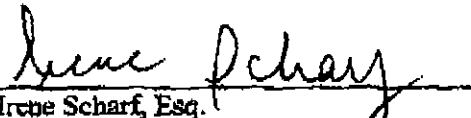
<u>Forum Fees</u>	= \$ 3,825.00
Total Fees	= \$ 3,825.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,825.00

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

ARBITRATION PANEL

Irene Scharf, Esq.	-	Public Arbitrator, Presiding Chairperson
Steven J. Seeche, J.D.	-	Public Arbitrator
Stephen M. Acerra, Jr., Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Irene Scharf, Esq.
Public Arbitrator, Presiding Chairperson

12/30/05
Signature Date

Steven J. Seeche, J.D.
Public Arbitrator

Signature Date

Stephen M. Acerra, Jr., Esq.
Non-Public Arbitrator

Signature Date

January 3, 2006
Date of Service (For NASD Dispute Resolution use only)

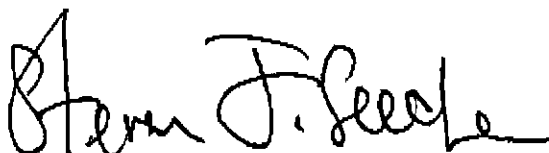
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Stephen M. Acerra, Jr., Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Irene Scharf, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Steven J. Seeche, J.D.
Public Arbitrator

12-29-05

Signature Date

Stephen M. Acerra, Jr., Esq.
Non-Public Arbitrator

Signature Date

January 3, 2006

Date of Service (For NASD Dispute Resolution use only)

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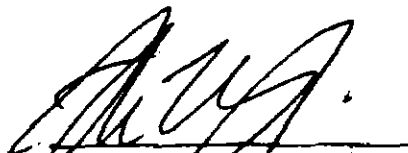
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Public Arbitrator, Presiding Chairperson

Signature Date

Steven J. Seeche, J.D.
Public Arbitrator

Signature Date



Stephen M. Acerra, Jr., Esq.
Non-Public Arbitrator

12/27/05

Signature Date

January 3, 2006

Date of Service (For NASD Dispute Resolution use only)