

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Vishnu Praimwati Maraj v. Merrill Lynch Pierce Fenner & Smith, Inc. and Larue R. Gibson

Case Number: 05-02395

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Vishnu Praimwati Maraj hereinafter referred to as "Claimant": Christopher J. Gray, Esq., Christopher J. Gray, P.C., New York, NY.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Larue R. Gibson ("Gibson") hereinafter collectively referred to as "Respondents": William J. Manning, Jr., Esq., Loeb & Loeb LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: May 5, 2005.

Claimant signed the Uniform Submission Agreement: May 1, 2005.

Joint Motion to Dismiss and Statement of Answer filed on or about: July 28, 2005.

Merrill Lynch signed the Uniform Submission Agreement: May 23, 2005.

Gibson signed the Uniform Submission Agreement: July 27, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: mismanagement of account, breach of fiduciary duty, negligence, breach of contract, failure to supervise and fraud. The causes of actions relate to Pilgrim Growth and Value mutual 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 \$277,136.27, punitive damages in the amount of \$554,272.54, disgorgement of all unjust enrichment, a sum equal to lost profits, costs and attorneys' fees.

Respondents requested dismissal of the Statement of Claim in its entirety with prejudice, expungement of Gibson's CRD record, attorneys' fees, costs and other further relief as the Panel deem just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Arbitrator Lalita A. Brockington, Esq. did not appear at the hearing scheduled for May 8, 2006. The parties agreed to proceed with two arbitrators.

At the hearing Respondents made a Motion for Directed Verdict. After due deliberation, the panel granted the Motion and dismissed the claims for relief "Two" through "Seven", inclusive as alleged in the Statement of Claim. The Panel denied the Motion with respect to the "First" claim.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's remaining claim ("First Claim") is denied in its entirety.
2. Respondent's Motion for discovery sanctions and attorneys' fees is denied.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Larue R. Gibson's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Larue R. Gibson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration Panel has made the following affirmative findings of fact:

The claim, allegation or information is factually impossible or clearly erroneous.

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	= \$ 375.00
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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 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	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

### **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) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: March 14, 2006	1 session

Two (2) Pre-hearing sessions with Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: October 26, 2005	1 session
December 20, 2005	1 session

Six (6) Hearing sessions with Panel @ \$1,200.00/session	= \$ 7,200.00
Hearing Dates: May 8, 2006	2 sessions
May 9, 2006	2 sessions
May 10, 2006	2 sessions

Total Forum Fees	= \$10,050.00
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1. The Panel has assessed \$5,025.00 of the forum fees to Claimant.
2. The Panel has assessed \$5,025.00 of the forum fees jointly and severally to Respondents.

## **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 5,025.00
Total Fees	= \$ 5,400.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 3,825.00

2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
<u>Total Fees</u>	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

3. Respondent Merrill Lynch and Gibson are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 5,025.00
<u>Total Fees</u>	= \$ 5,025.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 5,025.00

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

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**ARBITRATION PANEL**

Annamaria Boccia-Kovarcik, Esq.	-	Public Arbitrator, Presiding Chairperson
Paul R. Walsh, Esq.	-	Non- Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Annamaria Boccia Kovarcik  
Annamaria Boccia-Kovarcik, Esq.  
Public Arbitrator, Presiding Chairperson

06/07/2006  
Signature Date

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Paul R. Walsh, Esq.  
Non-Public Arbitrator

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Signature Date

June 8, 2006

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Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Annamaria Boccia-Kovarcik, Esq.	-	Public Arbitrator, Presiding Chairperson
Paul R. Walsh, Esq.	-	Non- Public Arbitrator

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\_\_\_\_\_  
Annamaria Boccia-Kovarcik, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Paul R. Walsh, Esq.  
Non-Public Arbitrator

6/7/2006  
Signature Date

June 8, 2006

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Date of Service (For NASD Dispute Resolution use only)