

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

David E. and Billie Thomasson

and

Case Number: 05-02524
Hearing Site: Houston, Texas

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
and John Schubert Kloss, Jr.

NATURE OF DISPUTE

Customers v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

David E. and Billie Thomasson ("**Claimants**") were represented by Hector G. Longoria, Esq., Heard, Robins, Cloud, Lubel & Greenwood, Houston, Texas.

Merrill Lynch Pierce Fenner & Smith, Inc. ("**Merrill Lynch**") and John Schubert Kloss, Jr. ("**Kloss**"), hereinafter collectively referred to as "**Respondents**," were represented by Craig H. Clendenin, Esq., The Ballard Law Firm, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about May 12, 2005. The Submission Agreement of Claimants, David E. and Billie Thomasson, was signed on or about June 5, 2004.

The Statement of Answer was filed jointly by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and John Schubert Kloss, Jr., on or about July 6, 2005. The Submission Agreement of Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about June 13, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: suitability, negligence, breach of fiduciary duty, and failure to supervise. The causes of action related to the recommendation and purchase of various unspecified securities. Claimants alleged that Respondent Kloss invested their money primarily in equities, which was contrary to their

conservative request and investment strategy for retirement.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; any losses allegedly incurred by Claimants were the result of market forces or Claimants' own investment decisions; Claimants' alleged losses were the result of their own contributory negligence; Claimants ratified the investments made in the accounts or, alternatively, waived their right to complain about them; Claimants failed to mitigate their damages; and Claimants' claims are barred by the applicable statutes of limitation.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$200,000.00
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondent Kloss requested that this claim be expunged from his CRD record.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, John Schubert Kloss, Jr., did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

On or about June 30, 2006, Respondents filed a Motion to Dismiss Claims on Limitation Grounds. Claimants presented the Panel with their response to this Motion at the final hearing. The Panel denied Respondents' Motion to Dismiss.

At the final hearing and before the close of the case, Respondents' counsel withdrew the claims for attorneys' fees and the proposed expungement request for Respondent Kloss.

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. In either case, the parties

have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimants' claims, each and all, are dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 300.00

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. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge = \$ 1,700.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 2,750.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 Panel x \$1,125.00 = \$ 1,125.00
Pre-hearing conference: September 12, 2005 1 session

Seven (7) Hearing sessions x \$1,125.00 = \$ 7,875.00
Hearing Dates: July 11, 2006 2 sessions
July 12, 2006 3 sessions
July 13, 2006 2 sessions

Total Forum Fees = \$ 9,000.00

The Arbitration Panel has assessed \$9,000.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

Claimant, David E. and Billie Thomasson, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Refund Due to Claimants	= \$ 1,125.00

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 9,000.00
Total Fees	= \$14,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 9,000.00

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

ARBITRATION PANEL

Malcolm Edwin Whittaker - Public Arbitrator, Presiding Chair
Frank M. Romano - Public Arbitrator
Dale A. Hearn - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Malcolm Edwin Whittaker
Malcolm Edwin Whittaker
Public Arbitrator, Presiding Chair

July 18, 2006
Signature Date

/s/ Frank M. Romano
Frank M. Romano
Public Arbitrator

July 17, 2006
Signature Date

/s/ Dale A. Hearn
Dale A. Hearn
Non-Public Arbitrator

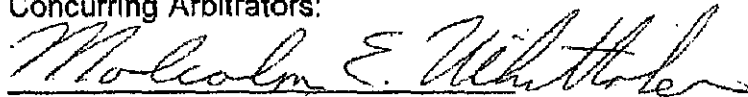
July 17, 2006
Signature Date

July 18, 2006
Date of Service (For NASD office use only)

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Frank M. Romano - Public Arbitrator
Dale A. Hearn - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

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Frank M. Romano
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Signature Date

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Public Arbitrator, Presiding Chair


Frank M. Romano
Public Arbitrator

Signature Date

7/17/06
Signature Date

Dale A. Hearn
Non-Public Arbitrator

Signature Date

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Dale A. Hearn
Non-Public Arbitrator

7-17-06
Signature Date

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