

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Lee I. Goldfarb, by: Richard Goldfarb Attorney-in-Fact, and Joan Goldfarb Achtermann Attorney-in-Fact (Claimant) vs. Merrill Lynch, Pierce, Fenner and Smith, Inc. (Respondent)

Case Number: 05-02723

Hearing Site: Cincinnati, Ohio

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

Claimant Lee I. Goldfarb, individually by his Attorneys-in-Fact, Richard Goldfarb and Joan Goldfarb Achtermann hereinafter referred to as "Claimant": William K. Flynn, Esq., Strauss & Troy, Cincinnati, OH.

Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. hereinafter referred to as "Respondent": David Newsome, Esq. and Bill Powell Guest, Esq., Day, Edwards, Propester & Christensen, P.C., Oklahoma City, OK.

CASE INFORMATION

Statement of Claim filed on or about: May 20, 2005.

Claimant signed the Uniform Submission Agreement: May 9, 2005.

Statement of Answer filed by Respondent on or about: August 11, 2005.

Respondent signed the Uniform Submission Agreement: November 7, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, suitability, negligence, breach of the duty of care, and respondeat superior. The causes of action relate to equity funds.

Unless specifically admitted in its 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 \$400,000.00, pre-award and post-award interest, costs, forum fees, and punitive damages in an amount the Panel deems appropriate.

Respondent requested the dismissal of the Statement of Claim in its entirety, costs, and fees.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearing Respondent moved to dismiss the Statement of Claim. The Panel heard all oral arguments and after due deliberation denied Respondent's Motion to Dismiss.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be executed.

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 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 | = \$ 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 persons at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner and Smith, Inc. is a party.

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

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 three arbitrators @ \$600.00 = \$ 600.00

One (1) Pre-hearing session with Panel @ \$1,125.00 per session = \$ 1,125.00
Pre-hearing conference: October 21, 2005 1 session

Five (5) Hearing sessions @ \$1,125.00 per session = \$ 5,625.00

Hearing Dates: May 9, 2006 2 sessions
May 10, 2006 2 sessions
May 11, 2006 1 session

Total Forum Fees = \$ 7,350.00

1. The Panel has assessed \$7,350.00 of the forum to Respondent.

Fee Summary

1. Claimant is solely liable for:

| | |
|---------------------|---------------|
| Initial Filing Fee | = \$ 300.00 |
| Total Fees | = \$ 300.00 |
| Less payments | = \$ 1,575.00 |
| Refund Due Claimant | = \$ 1,275.00 |

2. Respondent is solely liable for:

| | |
|-------------------------------------|----------------|
| Member Fees | = \$ 5,200.00 |
| Forum Fees | = \$ 7,350.00 |
| Total Fees | = \$ 12,550.00 |
| Less payments | = \$ 5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 7,350.00 |

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

ARBITRATION PANEL

| | | |
|-----------------------|---|--|
| Lisa Shusterman | - | Public Arbitrator, Presiding Chairperson |
| Carol M. Stoner, Esq. | - | Public Arbitrator |
| Marilyn R. Rathbun | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Lisa Shusterman
Public Arbitrator, Presiding Chairperson

Signature Date


Carol M. Stoner, Esq.
Public Arbitrator


Signature Date

Marilyn R. Rathbun
Non-Public Arbitrator

Signature Date

May 30, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Signature Date

Carol M. Stoner, Esq.
Public Arbitrator

Signature Date



Marilyn R. Rathbun
Non-Public Arbitrator



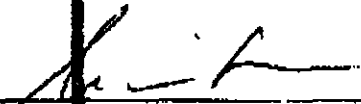
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Lisa Shusterman
Public Arbitrator, Presiding Chairperson

5.30.06
Signature Date

Carol M. Stoner, Esq.
Public Arbitrator

Signature Date

Marilyn R. Rathbun
Non-Public Arbitrator

Signature Date

May 30, 2006
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