

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Robert M. and Joyce A. Vogel

and

05-02986
Kansas City, Missouri

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Incorporated
David Eugene Black

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

REPRESENTATION OF PARTIES

Robert M. and Joyce A. Vogel ("**Claimant**") was represented at the hearing by Sean Keane, Esq., SimmonsCooper LLC, East Alton, Illinois.

Merrill Lynch Pierce Fenner & Smith Incorporated ("**Respondent MLPF & S**") and David Eugene Black ("**Respondent Black**") hereinafter referred to as ("**Respondents**") were represented at the hearing by Kelly Callahan, Esq., Day Edwards Propester & Christensen PC, Oklahoma City, Oklahoma.

CASE INFORMATION

The Statement of Claim was filed on or about June 8, 2005. Submission Agreement of Claimant Robert M. and Joyce A. Vogel was signed on May 31, 2005.

Answer and Motion to Strike of Respondents Merrill Lynch Pierce Fenner & Smith Incorporated and David Eugene Black was filed on or about August 16, 2005. Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith Incorporated was undated and signed by John P. Bevilacqua. Submission Agreement of Respondent David Eugene Black was signed on July 19, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: Breach of Fiduciary Duty; Breach of Contract; Violation of the Securities Exchange Act; Violation of the Kansas Securities Act; and, Negligence. Claimants specifically alleged that by placing Bob and Joyce's assets in an asset allocation severely overweighed in equity and equity based mutual funds was, in itself, unsuitable. To select volatile growth stocks and mutual funds comprised of such stocks was, at best, reckless if no wanton, conduct. Merrill Lynch knew better.

Unless specifically admitted in their Answer, Respondents Merrill Lynch Pierce Fenner & Smith Incorporated and David Eugene Black denied the allegations made in the Statement of Claim specifically asserted the following defenses: Claimants' claim are barred by the applicable statutes of limitation and NASD Arbitration Rules; Claimants' claims are barred by waiver, ratification, acquiescence, and estoppel; Respondents were not the proximate cause of Claimants' alleged losses; Claimants' were contributory negligent; Any right of recovery is limited by the doctrine of comparative fault; Claimants' claims are barred by the equitable doctrine of laches; Claimants' alleged losses were not foreseeable; Claimants' assumed the risk of the market; etc. Respondents specifically stated the fact is that Mr. Vogel is simply an investor who refuses to accept the consequences of his own decisions and a severe market decline.

RELIEF REQUESTED

Claimants requested an award be entered in their favor and against Black and Merrill Lynch as follows:

- A. Compensatory damages of at least \$138,102;
- B. All the costs of this Arbitration including an award of reasonable attorney's fees, and pre-award interest at 15% pursuant to the Kansas Securities Act; and,
- C. Whatever additional relief the Arbitration Panel believes just and within their authority.

Respondents requested that the Panel: (a) deny the Claim in its entirety; (b) expunge Mr. Black's CRD record of this claim; and (c) assess the costs and fees incurred in this action against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

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 the NASD Dispute Resolution (the "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. Respondents Merrill Lynch Pierce Fenner & Smith Incorporated and David Eugene Black, are jointly and severally liable for and shall pay to Claimant Robert M. Vogel the sum of \$14,741.07 (**Fourteen Thousand Seven Hundred Forty One Dollars and Seven Cents**).
2. On the claims asserted on behalf of Joyce A. Vogel, the Arbitration Panel finds in favor of Respondents.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Merrill Lynch Pierce Fenner & Smith Incorporated.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	<u>5,200.00</u>

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

1	Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
	October 28, 2005	1	session		
4	Hearing sessions	x	1,125.00	\$	4,500.00
	June 6, 2006	2	sessions		
	June 7, 2006	2	sessions		
	Total Forum Fees			\$	5,625.00

The Arbitration Panel has assessed \$2,812.50 of the forum fees jointly and severally to Robert M. and Joyce A. Vogel.

The Arbitration Panel has assessed \$2,812.50 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith Incorporated and David Eugene Black.

Fee Summary

Claimants, Robert M. and Joyce A. Vogel are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	2,812.50
Total Fees	= \$	3,112.50
<u>Less payments</u>	= \$	-1,575.00
Balance Due NASD Dispute Resolution	= \$	1,537.50

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

Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Merrill Lynch Pierce Fenner & Smith Incorporated and David Eugene Black, are jointly and severally liable for:

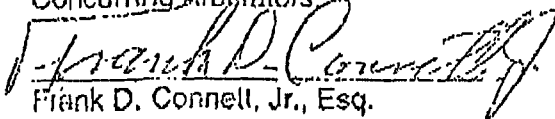
<u>Forum Fees</u>	= \$	2,812.50
Total Fees	= \$	2,812.50
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	2,812.50

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Frank D. Connell, Jr., Esq. - Public Arbitrator, Presiding Chair
Dale C. Putman, JD - Public Arbitrator
Sandra K. Hummel - Non-Public Arbitrator

Concurring Arbitrators:


Frank D. Connell, Jr., Esq.
Public Arbitrator, Presiding Chair

6/13/08
Signature Date

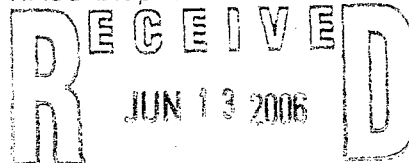
Dale C. Putman, JD
Public Arbitrator

Signature Date

Sandra K. Hummel
Non-Public Arbitrator

Signature Date

6/13/06
Date of Service (For NASD office use only)



ARBITRATION PANEL

Frank D. Connett, Jr., Esq. - Public Arbitrator, Presiding Chair
Dale C. Putman, JD - Public Arbitrator
Sandra K. Hummel - Non-Public Arbitrator

Concurring Arbitrators:

Frank D. Connett, Jr., Esq.
Public Arbitrator, Presiding Chair

A handwritten signature in cursive script, appearing to read "Dale C. Putman".

Dale C. Putman, JD
Public Arbitrator

Signature Date

6-9-06

Signature Date

Sandra K. Hummel
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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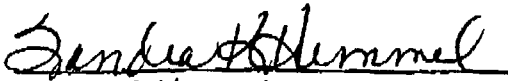
Concurring Arbitrators:

Frank D. Connett, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

Dale C. Putman, JD
Public Arbitrator

Signature Date


Sandra K. Hummel
Non-Public Arbitrator

6/12/06
Signature Date

Date of Service (For NASD office use only)