

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

Joyce James

vs.

Case Number: 05-04111
Hearing Site: Houston, Texas

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

NATURE OF THE DISPUTE

Customer vs. Member

REPRESENTATION OF PARTIES

Joyce James ("Claimant") was represented by Bertrand C. Moser, Esq., Houston, Texas.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent" or "Merrill Lynch") was represented by Stuart T. Rebish, Esq., Merrill Lynch, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about August 8, 2005. The Submission Agreement of Claimant, Joyce James, was signed on or about August 3, 2005.

The Statement of Answer was filed by Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., on or about October 31, 2005. The Submission Agreement of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., was signed on or about October 28, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; breach of fiduciary duty; suitability; and negligence. The causes of action related to the recommendation and purchase of various unspecified securities. Claimant alleged that Respondent sold the most conservative portions of her portfolio and moved that money into higher risk equity funds, without her consent. Claimant alleged that the unauthorized and unsuitable reallocations made by Respondent were not in line with her conservative investment objective, which was retirement. Claimant asserted that Respondent breached its contractual duties to Claimant and intentionally and/or negligently harmed Claimant's

property.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; the claims are barred, in whole or in part, by the applicable statutes of limitation; the claims are barred by the defenses of estoppel, waiver, ratification, and laches; all losses allegedly suffered by Claimant were proximately caused by Claimant's own conduct or negligence; Claimant failed to act to mitigate the alleged damages; Claimant, acting with full knowledge and notice of the facts, authorized, ordered, approved, accepted, acquiesced, confirmed, and participated in and ratified the acts and transactions complained of in all respects and upon which recovery is sought; and Claimant did not reasonably rely on any wrongful action or inaction by Respondent.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$250,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

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.

AWARD

After considering the pleadings, the testimony, and the 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, each and all, are hereby denied and dismissed with prejudice;
- 2.) Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., is liable for and shall pay to Claimant, Joyce James, the sum of \$300.00 in costs as

reimbursement for the filing fee;

- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) 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
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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 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 Panel has assessed forum fees for each hearing 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 Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: January 13, 2006	1 session
Four (4) Hearing sessions x \$1,125.00	= \$ 4,500.00
Hearing Dates: October 24, 2006	2 sessions
October 25, 2006	2 sessions
Total Forum Fees	= \$ 5,625.00

The Panel has assessed \$5,625.00 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith, Inc.

FEE SUMMARY

Claimant, Joyce James, is liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
<u>Refund Due Claimant</u>	= \$ 1,125.00

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

<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 5,625.00
<u>Total Fees</u>	= \$10,825.00
<u>Less payments</u>	= \$ 5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 5,625.00

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

ARBITRATION PANEL

Martha Failing, Esq. - Public Arbitrator, Presiding Chair
Michael L. Landrum - Public Arbitrator
Sellenne Calhamer - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Martha Failing, Esq.
Martha Failing, Esq.
Public Arbitrator, Presiding Chair

October 31, 2006
Signature Date

/s/ Michael L. Landrum
Michael L. Landrum
Public Arbitrator

October 26, 2006
Signature Date

/s/ Sellenne Calhamer
Sellenne Calhamer
Non-Public Arbitrator

October 26, 2006
Signature Date

October 26, 2006
Date of Service (For NASD office use only)

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Michael L. Landrum - Public Arbitrator
Selenne Calhamer - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Martha Failing
Martha Failing, Esq.
Public Arbitrator, Presiding Chair

4 October 2006
Signature Date

Michael L. Landrum
Public Arbitrator

Signature Date

Selenne Calhamer
Non-Public Arbitrator

Signature Date

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Michael L. Landrum - Public Arbitrator
Sellenne Calhamer - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Martha Failing, Esq.
Public Arbitrator, Presiding Chair


Michael L. Landrum
Public Arbitrator

Signature Date

26 October 2006
Signature Date

Sellenne Calhamer
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Martha Failing, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Michael L. Landrum
Public Arbitrator

Signature Date

Sellenne Calhamer
Non-Public Arbitrator

10.26.06

Signature Date

Date of Service (For NASD office use only)