

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Kelvin Williams

and

Case Number: 05-04614  
Hearing Site: Houston, Texas

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

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**NATURE OF DISPUTE**

Customer v. Member Firm

**REPRESENTATION OF PARTIES**

Kelvin Williams ("Claimant") was represented by Debra Brewer Hayes, Esq., Woska & Hayes, LLP, Kingwood, Texas.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Respondent" or "Merrill Lynch") was represented by Lauryn J. Hart, Esq., Merrill Lynch Pierce Fenner & Smith, Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 2, 2005. The Submission Agreement of Claimant, Kelvin Williams, was signed on or about August 11, 2005. Claimant filed his response to the Motion to Dismiss on or about November 18, 2005.

A Motion to Dismiss, Preliminary Answer and Affirmative Defenses were filed by Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., on or about November 14, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: suitability, negligence, misrepresentations, breach of fiduciary duty, failure to supervise and breach of contract. The causes of action related to the recommendation and purchase of various unspecified securities. Claimant alleged that Respondent did not diversify his account and devised an investment scheme that focused solely on technology and Internet stocks. Claimant also alleged that Respondent did not explain the disadvantages of short-term trading and the

tax consequences related to his investment strategy.

Unless specifically admitted in its Answer, Respondent, Merrill Lynch, 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; Claimant's claims are barred in whole or in part by the applicable statutes of limitations and/or by the equitable doctrine of laches; Claimant approved, ratified, accepted and confirmed each and every transaction in his account; Claimant's alleged damages sustained were caused by Claimant's own investment decisions and market conditions outside the control of Respondent; and Claimant failed to mitigate his damages.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$70,000.00
Punitive/Exemplary Damages	Unspecified
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 their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., 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 prehearing is bound by the determination of the arbitration panel on all issues submitted.

On or about March 20, 2006, the Panel issued an Order granting Respondent's Motion to Dismiss. Therefore, Claimant's claims have been dismissed without prejudice.

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 prehearings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are hereby dismissed without 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 = \$ 225.00

#### **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 = \$ 1,100.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 1,700.00

#### **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:

Two (2) Pre-hearing sessions with Panel x \$750.00 = \$ 1,500.00  
Pre-hearing conferences: January 9, 2006 1 session

February 24, 2006

1 session

Total Forum Fees = \$ 1,500.00

The Arbitration Panel has assessed \$750.00 of the forum fees to Kelvin Williams.

The Arbitration Panel has assessed \$750.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

**Fee Summary**

Claimant, Kelvin Williams, is liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 975.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 750.00
Total Fees	= \$ 4,300.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 750.00

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

**ARBITRATION PANEL**

Don E. Tomlinson - Public Arbitrator, Presiding Chair  
Eric R. Benton, Esq. - Public Arbitrator  
Carol Ann Stapper - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Don E. Tomlinson  
Don E. Tomlinson  
Public Arbitrator, Presiding Chair

March 20, 2006  
Signature Date

/s/ Eric R. Benton, Esq.  
Eric R. Benton, Esq.  
Public Arbitrator

March 20, 2006  
Signature Date

/s/ Carol Ann Stapper  
Carol Ann Stapper  
Non-Public Arbitrator

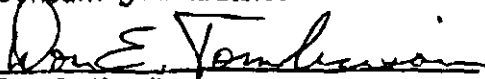
March 20, 2006  
Signature Date

March 20, 2006  
Date of Service (For NASD office use only)

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Eric R. Benton, Esq. - Public Arbitrator  
Carol Ann Stapper - Non-Public Arbitrator

Concurring Arbitrators:



Don E. Tomlinson  
Public Arbitrator, Presiding Chair

3/20/06  
Signature Date

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Eric R. Benton, Esq.  
Public Arbitrator

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