

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of Claimants

Willis Preece and Nina Preece

vs.

Case Number: 05-04744
Hearing Site: Louisville, Kentucky

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

NATURE OF THE DISPUTE

Customers vs. Member

REPRESENTATION OF PARTIES

Willis Preece and Nina Preece ("Claimants") were represented by Charles C. Hunter, Esq., Woska & Hayes, LLP, Houston, Texas.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") was represented by H. Kyeng Lee, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about August 9, 2005. The Submission Agreement of Claimants, Willis Preece and Nina Preece, was signed on or about August 26, 2005.

The Statement of Answer was filed by Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., on or about October 28, 2005. The Submission Agreement of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. was signed on or about October 28, 2005 by Robert E. Goldberg, Director and Senior Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc.

An Amended Statement of Claim was filed by Claimants on or about December 5, 2006.

An Amended Statement of Answer was filed by Respondent on or about January 5, 2007.

Claimants filed a Reply to Respondent's Amended Answer on or about January 26, 2007.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; breach of contract; violation of Know Your Customer Rule; suitability; failure to diversify; failure to supervise; and failure to hedge. The causes of action related to the suitability of several risky mutual funds including Goldman Sachs Internet Tollkeeper Fund Class B and Delaware Select Growth Fund Class B. Claimants alleged that their account was mismanaged through Respondent's failure to diversify their holdings or implement an asset reallocation plan that would have been more appropriate with their stated investment goals and objectives.

Unless specifically admitted in its Answer, Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants' claim failed to state a claim upon which relief can be granted; Claimants had full control over all investment decisions made for the account at issue, and any losses that were incurred and any diminutions in value of the accounts, resulted from investment decisions made by them and market price fluctuations that were beyond the ability of Respondent to control or predict; if Claimants suffered any losses in their Merrill Lynch accounts, such losses were proximately caused by their own negligent or reckless conduct; Respondent is not liable to Claimants, in any amount, because, at all times relevant hereto, Respondent acted properly, in good faith, and in a commercially reasonable manner with respect to the accounts at issue; Respondent never recommended an unsuitable investment for the Claimants' accounts; Respondent never acted at any time with scienter or with any intent to harm the financial interests of Claimants; and Respondent had in place adequate supervisory procedures, which it reasonably and diligently implemented and followed at all relevant times.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$ 11,000.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
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

On or about September 13, 2006, Claimants submitted a Request for Simplified Arbitration. On or about September 22, 2006, Respondent filed a Response to Claimants' Request for Simplified Arbitration. The Arbitrator granted Claimants' Request for Simplified Arbitration on or about October 4, 2006.

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 Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimants' claims, each and all, are hereby denied and 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 = \$ 125.00

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

Member surcharge = \$ 425.00

Forum Fees and Assessments

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

Three (3) Pre-hearing sessions with a single arbitrator x \$ 450.00	= \$ 1,350.00
Pre-hearing conferences: January 9, 2006	1 session
September 11, 2006	1 session
October 4, 2006	1 session

Decision on the Pleadings	= \$ 300.00
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Total Forum Fees	= \$ 1,650.00
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The Arbitrator has assessed \$ 825.00 of the forum fees jointly and severally to Willis Preece and Nina Preece.

The Arbitrator has assessed \$ 825.00 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith, Inc.

FEE SUMMARY

Claimants, Willis Preece and Nina Preece, are jointly and severally liable for:

Initial Filing Fee	= \$ 125.00
Forum Fees	= \$ 825.00
Total Fees	= \$ 950.00
Less payments	= \$ 575.00
Balance Due NASD Dispute Resolution	= \$ 375.00

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

Member Fees	= \$ 425.00
Forum Fees	= \$ 825.00
Total Fees	= \$ 1,250.00
Less payments	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 825.00

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

ARBITRATOR

Leah M. Balk-Teitelbaum, Esq. - Public Arbitrator, Presiding Chair

Arbitrator's Signatures:

Leah M. Balk-Teitelbaum, Esq.
Public Arbitrator, Presiding Chair

Signature Date

1/30/07
Date of Service (For NASD office use only)

ARBITRATOR

Leah M. Balk-Teitelbaum, Esq. - Public Arbitrator, Presiding Chair

Arbitrator's Signatures:



Leah M. Balk-Teitelbaum, Esq.
Public Arbitrator, Presiding Chair


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