

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

Dorothy C. Maxson, through her Conservator,
Colleen M. Hirsch

vs.

Case Number: 05-05130
Hearing Site: Troy, Michigan

Name of Respondent

Merrill Lynch Pierce, Fenner & Smith, Inc.

and

Name of Third-Party Claimant/Respondent

Merrill Lynch Pierce, Fenner & Smith, Inc.

vs.

Name of Third-Party Respondent

Lauri Lynn Hirsch

NATURE OF THE DISPUTE

Customer vs. Member

REPRESENTATION OF PARTIES

Dorothy C. Maxson, through her Conservator, Colleen M. Hirsch ("Claimant") was represented by Gregory T. Stremers, Esq., Touma, Watson, Whaling, Coury & Castello, P.C., Port Huron, Michigan.

Merrill Lynch Pierce, Fenner & Smith, Inc. ("Respondent" or "Merrill Lynch") was represented by Jeffry T. Rogg, Esq., Miller Canfield Paddock and Stone P.L.C., Detroit, Michigan.

Lauri Lynn Hirsch ("Lauri Hirsch") did not appear in this matter.

CASE INFORMATION

The Statement of Claim was filed on or about October 3, 2005. The Arbitration Summary was filed on or about October 14, 2005. The Submission Agreement of Claimant, Dorothy C. Maxson, was signed on or about January 9, 2006, by her Conservator, Colleen M. Hirsch.

The Statement of Answer, Defenses, and Third-Party Claim was filed by Respondent on or about April 5, 2005. The Submission Agreement of Respondent was signed on or about April 18, 2006, by Joseph J. Pash, Director and Senior Counsel.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, violation of the Michigan Uniform Commercial Code, negligence, and breach of duty. The causes of action related to Claimant's allegation that Respondent allowed Lauri Hirsch to withdraw funds from Claimant's account through unauthorized ATM withdrawals and forged checks. Claimant asserted that this activity was in violation of an express or implied depository agreement with Claimant.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: failure to give adequate and timely notice of any disputed transactions, ratification, and Claimant's failure to safeguard her PIN number on her ATM card.

In its Third-Party Claim, Respondent asserted the following cause of action: indemnification. Respondent alleged that L. Hirsch had plead guilty to and been convicted of a felony for the behavior complained of in the Statement of Claim and any restitution to Claimant should come from L. Hirsch.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$ 33,239.02
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.

In the Third-Party Claim, Merrill Lynch requested an award in the amount of:

Actual/Compensatory Damages	\$ 33,239.02
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

OTHER ISSUES CONSIDERED & DECIDED

Third-Party Respondent, Lauri Lynn Hirsch, is not associated with an NASD Member Firm. Lauri Lynn Hirsch did not voluntarily submit to NASD arbitration, nor was a contract to arbitrate disputes with Lauri Lynn Hirsch presented. Therefore, Lauri Lynn Hirsch is not compelled by NASD rules to arbitrate disputes in this forum. In the absence of Lauri Lynn Hirsch's voluntary submission, NASD does not have jurisdiction over this party.

Merrill Lynch withdrew its Third-Party Claim on the record at the hearing on December 6, 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 testimony, and the evidence presented at the hearing, the Arbitrator 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.) 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 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 fees for each claim:

Initial Claim filing fee	= \$ 175.00
Third-Party Claim filing fee	= \$1,000.00

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	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

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:

One(1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: August 3, 2006 1 session	
Four (4) Hearing sessions x \$450.00	= \$1,800.00
Hearing Dates: December 6, 2006 2 sessions	
December 7, 2006 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$2,250.00

The Arbitrator has assessed \$1,125.00 of the forum fees to Dorothy C. Maxson, through her Conservator, Colleen M. Hirsch.

The Arbitrator has assessed \$1,125.00 of the forum fees to Merrill Lynch Pierce, Fenner & Smith, Inc.

FEE SUMMARY

Claimant, Dorothy C. Maxson, through her Conservator, Colleen M. Hirsch, is liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$1,125.00
Total Fees	= \$1,300.00
Less payments	= \$1,125.00
Balance Due NASD Dispute Resolution	= \$ 175.00
Plus Balance Refunded by NASD Dispute Resolution	= \$ 475.00
Balance Due NASD Dispute Resolution	= \$ 650.00

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

Third-Party Claim Filing Fee	= \$1,000.00
Member Fees	= \$2,625.00
Forum Fees	= \$1,125.00
Total Fees	= \$4,750.00
Less payments	= \$4,075.00
Balance Due NASD Dispute Resolution	= \$ 675.00

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

ARBITRATOR

Frederick R. Fordon - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

/s/ Frederick R. Fordon
Frederick R. Fordon
Public Arbitrator, Presiding Chair

12/13/06
Signature Date

12/13/06
Date of Service (For NASD office use only)

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