

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 06-00003

Gerald T. Wyatt

Names of the Respondents

Hearing Site: Charleston, West Virginia

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Citigroup Global Markets, Inc.
Chandis Ferguson, II

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

REPRESENTATION OF PARTIES

Claimant, Gerald T. Wyatt, hereinafter referred to as "Claimant", was represented by Stephen P. Meyer, Esq., Meyer & Ford, Charleston, West Virginia.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Chandis Ferguson, II ("Ferguson"), were represented by Harry D. Frisch, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

Respondents, Citigroup Global Markets, Inc. ("Citigroup") and Ferguson, were represented by Joseph L. Calabrese, Esq., Citigroup Global Markets, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on December 30, 2005.

Claimant signed the Uniform Submission Agreement on December 30, 2005.

Respondents Merrill Lynch and Ferguson filed their Motion to Dismiss Statement of Claim, or Alternatively, Motion for More Definite Statement of Claim and Preliminary Answer to Statement of Claim on March 31, 2006.

Statement of Answer and Motion to Dismiss filed by Respondents Citigroup and Ferguson on April 24, 2006.

Joseph L. Calabrese, Senior Vice President, executed Respondent Citigroup's Uniform Submission Agreement on April 24, 2006.

Respondents Merrill Lynch and Ferguson did not file Uniform Submission Agreements with NASD Dispute Resolution.

Claimants' Response to Respondents' Motions to Dismiss was filed on June 14, 2006.

CASE SUMMARY

Claimant asserted the following causes of action, among others: unsuitability, violation of the Securities Exchange Act of 1934, violation of West Virginia Common Law, fraud, negligence, breach of contract, breach of fiduciary duty, violation of NASD Conduct Rules, violation of New York Stock Exchange Rules, and *respondent superior*. The causes of action relate to the purchase and sale of mutual funds.

Unless specifically admitted in their Answer, Respondents Merrill Lynch and Ferguson denied the allegations made in the Statement of Claim and asserted a defense of statute of limitations.

Unless specifically admitted in their Answer, Respondents Citigroup and Ferguson denied the allegations made in the Statement of Claim and asserted the following defenses, among others: statute of limitations, failure to state a claim upon which relief may be granted, ratification, no private right of action for violation of a NASD or NYSE rule, waiver, estoppel, and assumption of risk.

RELIEF REQUESTED

Claimant in his Statement of Claim requested: compensatory damages of \$160,000.00, disgorgement of all profits and commissions, costs, interest, attorneys' fees, punitive damages, and any further relief the Panel deems just, proper, and equitable.

Respondents Merrill Lynch and Ferguson in their Statement of Answer requested that the Statement of Claim be dismissed.

Respondents Citigroup and Ferguson in their Statement of Answer requested that the Statement of Claim be dismissed and that Respondent Ferguson's regulatory record be expunged.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Merrill Lynch and Ferguson did not file with NASD Dispute Resolution, properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code of Arbitration Procedure and, having answered the claim are bound by the determination of the Panel on all issues submitted.

AWARD

After considering the pleadings, the oral argument and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed with prejudice on statute of limitations grounds;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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
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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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondents Merrill Lynch and Citigroup are parties.

Merrill Lynch's Member Fees:

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

Citigroup's Member Fees:

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

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences: July 28, 2006 1 session	
August 23, 2006 1 session	
<hr/> Total Forum Fees	<hr/> = \$2,250.00

1. The Panel has assessed \$1,125.00 of the forum fees to Claimants.
2. The Panel has assessed \$1,125.00 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,125.00
<hr/> Total Fees	<hr/> = \$1,425.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
2. Respondent Merrill Lynch is assessed and shall pay the following fees:

Member Fees	= \$5,200.00
<hr/> Total Fees	<hr/> = \$5,200.00
<u>Less payments</u>	<u>= \$2,450.00</u>
Balance Due NASD Dispute Resolution	= \$2,750.00
3. Respondent Citigroup is assessed and shall pay the following fees:

Member Fees	= \$5,200.00
<hr/> Total Fees	<hr/> = \$5,200.00
<u>Less payments</u>	<u>= \$2,450.00</u>
Balance Due NASD Dispute Resolution	= \$2,750.00
4. Respondents are jointly and severally assessed and shall pay the following fees:


Forum Fees	= \$1,125.00
<hr/> Total Fees	<hr/> = \$1,125.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,125.00

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

ARBITRATION PANEL

Charles D. Underwood, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
George H. Perich, Esq.	-	Public Arbitrator, Panelist
Marc E. Henn, CFP	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Charles D. Underwood, Jr., Esq.
Public Arbitrator, Presiding Chairperson

09-06-06
Signature Date

George H. Perich, Esq.
Public Arbitrator, Panelist

Signature Date

Marc E. Henn, CFP
Non-Public Arbitrator, Panelist

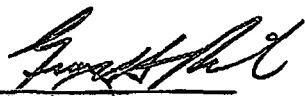
Signature Date

September 11, 2006
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Charles D. Underwood, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



George H. Perich, Esq.
Public Arbitrator, Panelist

Sept 6, 2006

Signature Date

Marc E. Henn, CFP
Non-Public Arbitrator, Panelist

Signature Date

September 11, 2006

Date of Service (For NASD Dispute Resolution office use only)

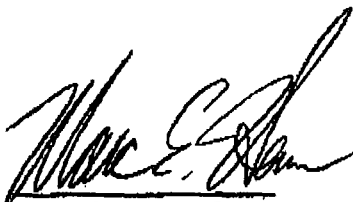
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Charles D. Underwood, Jr., Esq.
Public Arbitrator, Presiding Chairperson

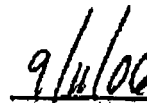
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George H. Perich, Esq.
Public Arbitrator, Panelist

Signature Date



Marc E. Henn, CFP
Non-Public Arbitrator, Panelist



Signature Date

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