

## **FINAL ORDER**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

Darryl Settles

and

Case Number: 95-00878

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.; and  
Samuel Reddick

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### **REPRESENTATION OF PARTIES**

Claimant Darryl Settles ("Claimant") was represented by Terry Williams, Esq. of Detroit, Michigan.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Samuel Reddick ("Reddick") (collectively referred to as "Respondents") were represented by Michael E. Olney, Esq. of Merrill Lynch located in New York, New York, and Michael P. Coakley, Esq. of Miller, Canfield, Paddock & Stone located in Detroit, Michigan.

### **CASE INFORMATION**

The Statement of Claim was filed on or about February 21, 1995.

Claimant's Submission Agreement was signed on February 13, 1995.

The Joint Statement of Answer was filed on or about May 17, 1995.

Respondent Merrill Lynch's Submission Agreement was signed on May 17, 1995 by Francis C. Musselman, Vice President and Senior Counsel of Merrill Lynch.

Respondent Reddick's Submission Agreement was signed on May 17, 1995.

The Amended Statement of Claim was filed on or about October 9, 1996.

The Amended Answer, Motion to Dismiss, and Motion for Sanctions was filed on or about October 2, 1996.

Claimant's Answer to Respondents' Motion to Dismiss and For Sanctions was filed on or about October 10, 1996.

### **HEARING INFORMATION**

A Hearing in this matter was held on August 7, 1996 for one (1) session in Southfield, Michigan. The telephonic Hearings were held on November 6, 1996 for one (1) session and November 18, 1996 for one (1) session.

### **CASE SUMMARY**

Claimant alleged that he represented to Respondent Reddick, a broker with Respondent Merrill Lynch, that he wished to invest in safe, conservative investments. Claimant contended that the investments which Respondent Reddick made for Claimant were unsafe, non-conservative and of high risk. Claimant asserted that Respondent Reddick purchased 200 shares of Combustion Engineering, Inc., 100 shares of Exxon Corporation, 200 shares of Occidental Petroleum Corporation, and 200 shares of Navistar International Corporation. Claimant maintained that Respondent Reddick poorly invested Claimant's assets in investments which were inappropriate and resulted in great losses to Claimant. Claimant made various claims, which included: fraudulent misrepresentation; violation of the Uniform Securities Act; breach of fiduciary duty; and breach of the duty to use ordinary care.

Respondents denied all liability to Claimant in the Joint Statement of Answer. Respondents alleged that Claimant represented that he was primarily interested in long term growth, and was also interested in intermediate term price appreciation and income. Respondents contended that, with respect Claimant's position in Navistar, that no loss was realized on that security while it was held at Merrill Lynch. Respondents asserted that, with respect to Combustion Engineering, Claimant realized a small net gain on the sale of that security. Respondents maintained that, with respect to Exxon, that Claimant not only realized no damages, he in fact, made a significant short term profit on the sale of that security. Respondents alleged that, with respect to Occidental Petroleum Corp, that position was delivered out of Merrill Lynch without any realized loss. Respondents asserted various affirmative defenses, which included: failure to state a claim upon which relief can be granted; estoppel, waiver, and ratification; and that the Claimant has not realized any damages.

A Hearing in this matter was held on August 7, 1996. During that Hearing, the panel ordered that the Claimant file an Amended Statement of Claim with NASD Regulation, Inc. Office of Dispute Resolution on or before September 25, 1996. Chairman Goldman also ordered that the Claimant comply with a previously issued order which required Claimant to produce documents and information. The Hearing was subsequently adjourned to an undetermined date.

Claimant then filed an Amended Statement of Claim. Respondents filed an Amended Answer and Motion to Dismiss and For Sanctions. Claimant filed a Response to the Motion to Dismiss and For Sanctions. On November 6, 1996 a telephonic hearing was held before the full panel to address Respondents' Motion to Dismiss and For Sanctions, and Claimant's Response. Prior to the start of that hearing, Ms. Williams' office advised NASD Regulation, Inc. Office of Dispute Resolution that she was unable to attend the Hearing. The panel adjourned the November 6th Hearing to November 18th, at which time a Hearing was held before the full panel with all parties present.

### **RELIEF REQUESTED**

Claimant requested an award of compensatory damages in the amount of \$20,000 and an award of punitive damages in the amount of \$20,000.

Respondents requested that the Statement of Claim be dismissed in its entirety, together with such other and further relief as is deemed just and proper. Respondents also requested sanctions against Claimant for bad faith conduct pursuant to MCR 2.114(e).

### **FINAL ORDER**

After considering the pleadings and oral arguments presented at the telephonic hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) That the Statement of Claim is hereby dismissed in its entirety without prejudice to Claimant Darryl Settles right to refile this claim with NASD Regulation, Inc. Office of Dispute Resolution. The panel finds that the Statement of Claim has failed to state a claim against Respondents upon which relief can be granted;
- (2) That other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- (3) That any relief not specifically enumerated is hereby denied.

### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 per pre-hearing session, if any. There was one (1) hearing sessions x \$400 = \$400 in forum fees. There were two (2) pre-hearing sessions x \$300 = \$600 in forum fees. Total forum fees = \$1,000. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure, a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$120 previously deposited with the NASD by the Claimant, and shall retain the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant.

Claimant Darryl Settles is liable for and shall pay forum fees in the amount of \$267.  
Respondents Merrill Lynch and Samuel Reddick are jointly liable for and shall pay forum fees in the amount of \$333.

**Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution**

**Concurring Arbitrators' Signatures**

\s\ Barry Goldman  
Barry Goldman, Esq.  
Chairperson  
Public Arbitrator

December 10, 1996  
Dated:

\s\ Burton L. Ansell  
Burton L. Ansell  
Panelist  
Public Arbitrator

December 16, 1996  
Dated:

\s\ Terry W. Maynard  
Terry W. Maynard  
Panelist  
Industry Arbitrator

December 7, 1996  
Dated:

For NASD Regulation use only:  
Date Order served on the parties: December 31, 1996