

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Robert Terry

Case No. 99-02191

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Richard Lopez

REPRESENTATION OF PARTIES

For Robert Terry, hereinafter referred to as "Claimant": William T. Kirtley, Esq. of the law firm of William T. Kirtley, P.A., Sarasota, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Richard Lopez ("Lopez"), hereinafter collectively referred to as "Respondents": Francis M. Curran, Esq. of the law firm of Holland & Knight, LLP, Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: May 12, 1999.

Claimant signed the Uniform Submission Agreement on: April 1, 1999.

Statement of Answer filed by Respondents on or about: October 6, 1999.

Respondent Merrill Lynch signed the Uniform Submission Agreement on: September 30, 1999.

Respondent Lopez signed the Uniform Submission Agreement on: October 1, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: 1) violations of the anti-fraud provisions of Chapter 517, Florida Statutes; 2) common law fraud; and 3) breach of fiduciary duty. Claimant, as sole beneficiary and heir of the estate of Helen Goodwin, sought damages for Respondents' improper management and excessive trading of securities in Helen Goodwin's account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Claimant failed to state a claim upon which relief may be granted; 2) Claimant was not damaged; 3) Respondents acted properly and in good faith; 4) all transactions were suitable for Helen Goodwin; 5) all claims which accrued more than six years prior to the filing of the Statement of Claim are barred by

statutes of limitations or Rule 10304 of the NASD-DR Code of Arbitration Procedure (the "Code"); 6) Claimant is barred from recovery by the doctrines of estoppel, laches, ratification, and waiver; 7) Claimant cannot prove loss causation as all risks were fully disclosed to Helen Goodwin; 8) Claimant's losses, if any, were the result of adverse market conditions or the acts of the issuer of the securities at issue; 9) federal securities laws preempt state or common law fiduciary duty claims; 10) Respondent Merrill Lynch maintained an adequate and reasonable system of supervision and control over its employees; 11) Respondent Merrill Lynch is not liable as a control person; 12) Respondent Merrill Lynch is not liable under the doctrine of respondeat superior; and 13) Claimant is not entitled to an award of attorneys' fees, punitive damages, interest, or costs.

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of \$73,600.00 for improper management of the account at issue; 2) return of commissions and costs in the amount of \$18,768.00; 3) unspecified compensatory damages for loss of growth in the account at issue; 4) punitive damages; 5) interest; and 6) attorneys' fees.

Respondents requested: 1) dismissal of the Statement of Claim; 2) expungement of any reference to the above-captioned proceeding from the NASD Central Registration Depository ("CRD") records relating to Respondent Lopez; and 3) such further relief the undersigned arbitrators (the "Panel") deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On April 10, 2000, the Panel granted Respondents' motion to dismiss time barred claims and denied Respondents' motion to dismiss the Statement of Claim in its entirety. The Panel dismissed all claims which accrued before April 1987 based upon statute of limitations.

On June 19, 2000, the Panel affirmed its dismissal without prejudice of the time barred claims. Further, the Panel granted Respondents leave to seek dismissal with prejudice of the time barred claims at the evidentiary hearing.

At the evidentiary hearing, Respondents moved the Panel to dismiss with prejudice the time barred claims. The Panel dismissed with prejudice the common law claims which accrued before April 6, 1993 and dismissed with prejudice the statutory claims arising under Chapter 517, Florida Statutes, which accrued before April 6, 1994.

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 evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the

issues submitted for determination as follows:

1. The claims for churning, unsuitability and securities fraud under Chapter 517, Florida Statutes, and the common law claims not dismissed in paragraph 2 below, are dismissed.
2. Arbitrators Puckett and Azadian find that Respondents breached their fiduciary duty to administer securities for Helen Goodwin's account that were compatible to her investment objectives. Arbitrator Taldone would have dismissed this claim.
3. Respondents are liable, jointly and severally, and shall pay to Claimant compensatory damages in the amount of \$10,000.00, pre-judgment interest specifically excluded. Post-judgment interest shall accrue in accordance with Rule 10330(h) of the Code.
4. Claimant's request for punitive damages is denied.
5. Respondents' request for expungement is denied.
6. Each side shall bear their respective costs, including attorneys' fees.
7. All other requests for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. 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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: August 30, 2000 1 session	
One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: April 10, 2000 1 session	
Six (6) Hearing sessions x \$1,125.00	= \$6,750.00
Hearing Dates: September 12, 2000 2 sessions	
September 13, 2000 2 sessions	
September 14, 2000 2 sessions	
Total Forum Fees	= \$8,325.00

The Panel has assessed the total forum fees of \$8,325.00 jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$300.00
Total Fees	= \$300.00
<u>Less payments</u>	<u>= \$300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondent Merrill Lynch be and hereby is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondents be and hereby are jointly and severally liable for:

Forum Fees	= \$8,325.00
Total Fees	= \$8,325.00
<u>Less payments</u>	<u>= \$ 0.00</u>

Balance Due NASD Dispute Resolution, Inc.

= \$8,325.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

/s/

Nicholas John Taldone, Esq.
Public Arbitrator, Presiding Chair
(Arbitrator Taldone respectfully dissents
from the decision rendered in this matter
with respect to the finding of a breach
of fiduciary duty.)

Signature Date

/s/

John Steven Azadian
Industry Arbitrator

Signature Date

/s/

Russell E. Puckett, PhD
Public Arbitrator

Signature Date

October 11, 2000

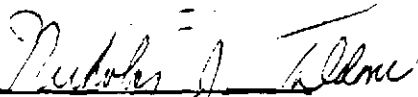
Date of Service (For NASD-DR office use only)

Balance Due NASD Dispute Resolution, Inc.

= \$8,325.00

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Nicholas John Taldone, Esq.
Public Arbitrator, Presiding Chair
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of fiduciary duty.)

10/2/00
Signature Date

John Steven Azadian
Industry Arbitrator

Signature Date

Russell E. Puckett, PhD
Public Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

Balance Due NASD Dispute Resolution, Inc.

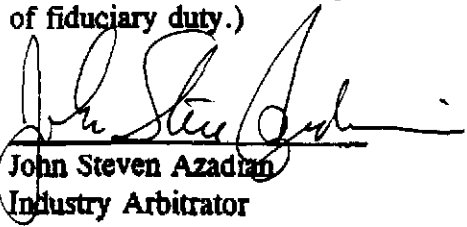
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of fiduciary duty.)

Signature Date


John Steven Azadian
Industry Arbitrator

9/29/00
Signature Date

Russell E. Puckett, PhD
Public Arbitrator

Signature Date

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Signature Date

John Steven Azadian
Industry Arbitrator

Signature Date



Russell E. Puckett, PhD
Public Arbitrator



Signature Date

Date of Service (For NASD-DR office use only)