

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Jayne C. Shinko

Case No. 99-05032

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc
Beverly A. Fanning

Hearing Location: Philadelphia, Pennsylvania

REPRESENTATION OF PARTIES

Claimant, Jayne C. Shinko, ("Claimant") was represented by Glenn S. Gitomer, Esq. of the law firm of McCausland, Keen & Buckman, Radnor, Pennsylvania.

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc ("Merrill Lynch") was represented by Kevin T. Duffy, Jr., Vice President and Counsel, Merrill Lynch Private Client Group, New York, New York.

Beverly A. Fanning ("Fanning") was represented by Morgan W. Bentley, Attorney at Law, Newark, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: November 5, 1999

Claimant signed the Uniform Submission Agreement: November 11, 1999

Statement of Answer filed by Merrill Lynch, on or about: February 9, 2000

Merrill Lynch's Uniform Submission Agreement was executed on: February 9, 2000

Fanning's Statement of Answer was filed on or about: February 11, 2000

Fanning signed the Uniform Submission Agreement: April 19, 2000

CASE SUMMARY

Claimant, among other things, alleged the following: in 1989, Claimant and her then husband, William Meile ("Mr. Meile"), opened a joint account at Merrill Lynch at Account No. 888-46706. The account representative with respect to the Account was Fanning. In September 1990, at Fanning's recommendation, Claimant and Mr. Meile purchased a Merrill Lynch Asset I Annuity (the "Annuity") in the Account. In September 1991, again at Fanning's

recommendation, Claimant decided to use the Annuity payments to fund premiums for a First Colony Life Insurance Policy (the "Policy") on the life of Mr. Meile.

Claimant asserted in the Statement of Claim that she believed that the Policy was jointly owned by Claimant and Mr. Meile and that Claimant would be named the beneficiary of the Policy. Based upon this belief, Claimant agreed to fund the premiums required for the Policy by the Annuity payments. In 1993, Claimant stated that she learned, for the first time, that the Policy was in Mr. Meile's name only, and called Fanning and directed that the Annuity payments not be used to fund the Policy. On July 14, 1993, per Fanning's request, Claimant sent a written request to Merrill Lynch requesting that Merrill Lynch stop using the Annuity payments to pay the Policy premiums. Claimant asserts that after the written request was made Merrill Lynch neither directed that the Annuity payments no longer be used to fund the Policy premiums, nor advised Claimant that they were not going to honor her July 14, 1993 request.

Respondents, Merrill Lynch and Fanning (hereinafter jointly referred to "Respondents") denied the allegations made by Claimant stating that she is estopped from asserting the claim due to the fact that Claimant's own actions and conduct indicated that Claimant approved and accepted in all respects the actions of Respondents of directing the Annuity payments to fund the Policy premiums. Respondents maintained, among other things, that Claimant failed to exercise due diligence and was reckless and negligent in the supervision of her financial affairs based on the fact that the Policy and the monthly statements indicated that Claimant was not the owner of the Policy but only the beneficiary under its terms.

RELIEF REQUESTED

Claimant, in her statement of claim, requested compensatory damages in the amount of \$57,499; plus interest at 6% per annum from the date of loss to through the date of the award, treble damages, attorneys' fees and costs.

Merrill Lynch requested that Claimant's claim be dismissed in its entirety and that the costs of this proceedings, including attorneys' fees and forum fees, be assessed against Claimant.

Fanning requested that Claimant's claim be dismissed in its entirety; that the costs of this proceeding, and that any reference to this matter be expunged from Fanning's CRD Record as inaccurate, untrue and misleading.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents' motion to dismiss was denied.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

AWARD

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

1. Merrill Lynch is liable to Claimant and shall pay to Claimant the sum of \$54,866.83 in compensatory damages and \$23,770.45 in interest; resulting in an aggregate award of \$78,637.28.
2. All claims against Fanning are denied in their entirety.
3. Claimant's request for treble damages is denied in its entirety.
4. The parties shall bear their respective costs including attorney's fees, except as Fees are specifically addressed below.
5. Merrill Lynch is directed to reimburse to Claimant the amount of \$300 which Claimant paid to the NASD Dispute Resolution, Inc. when she filed her claim.
6. Fanning's request to have this matter expunged from her CRD Record is denied.
7. Any and all claims for relief not specifically addressed herein are denied in their entirety.

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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Merrill Lynch.

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

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 sessions with Panel x \$1,125	= \$ 1,125.00
Hearing date: November 1, 2000	

Two (2) Hearing sessions x \$1,125.00	= \$ <u>2,250.00</u>
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Total Forum Fees

= \$ 3,375.00

The Panel has assessed \$ 3,375.00 in forum fees against Merrill Lynch.

Fee Summary

Claimant, Jayne C. Shinko is assessed the following fee:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
Refund Due from NASD Dispute Resolution	= \$1,125.00

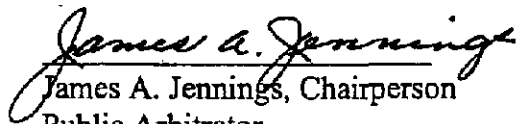
Merrill Lynch is assessed the following fees:

Member Fees	= \$4,600.00
<u>Forum Fees</u>	= \$3,375.00
Total Fees	= \$7,975.00
<u>Less payments</u>	= \$4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,375.00

No Fees were assessed to Fanning.

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

Concurring Arbitrators' Signatures


James A. Jennings, Chairperson
Public Arbitrator

April 6, 2001
Signature Date

Denis E. Coughlin, Panelist
Public Arbitrator

Signature Date

Garrett T. Cantwell, Panelist
Non Public Arbitrator

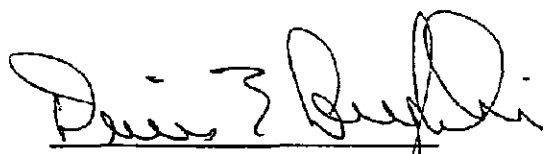
Signature Date

April 9, 2001
Date of Service (For NASD-DR office use only)

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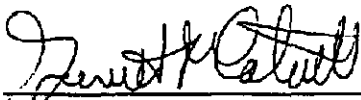
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