

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

The Estate & Testamentary Trusts of Eurilla Marie Herrin Mayerle,
Claimant,

Vs.

Merrill Lynch Pierce Fenner & Smith Inc., and Murray Keith Lake,
Respondents.

Case Number: 99-05126

Hearing Site: Houston, Texas

REPRESENTATION OF PARTIES

Claimant the Estate & Testamentary Trusts of Eurilla Marie Herrin Mayerle, "Estate of Mayerle" was represented by Frank L. Mauro, Esq., located in Lake Jackson, Texas.

Respondent Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") was represented by John A. Basinger, Esq. of the firm Gibbs & Bruns, LLP, located in Houston, Texas.

Respondent Murray Keith Lake ("Lake") was represented by Caren Sweetland of the firm Gibbs & Bruns, L.L.P., located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed on or about: January 4, 2000

Thomas P. Mayerle, as representative of the Estate and Trustee of the Testamentary Trusts of Eurilla Marie Herrin Mayerle, Claimant, signed the Uniform Submission Agreement: November 5, 1999.

Supplemental Statement of Claim filed on or about: December 17, 1999.

* Second supplemental Statement of Claim filed on or about June 12, 2000.

Third Supplemental Statement of Claim filed on: June 9, 2000.

Fourth Supplemental Statement of Claim filed on: July 3, 2000.

Fifth Supplemental Statement of Claim filed on or about: November 27, 2000.

Respondent Merrill Lynch filed the Statement of Answer on or about: March 6, 2000.

Respondent Merrill Lynch signed the Uniform Submission Agreement on January 14, 2000.

Respondent Lake filed a Statement of Answer, which incorporated the Statement of Answer filed by Respondent Merrill Lynch, on April 19, 2001.

Respondent Lake did not file a Uniform Submission Agreement.

Respondent Merrill Lynch filed the First Amended Statement of Answer and Counterclaim on or about: November 30, 2000.

CASE SUMMARY

Claimant alleged the following cause of action against the Respondents Merrill Lynch and Lake: Unsuitable investments; Churning; Unauthorized trading; Failure to freeze the client account upon notice of client's death; Breach of fiduciary duty; Negligence; Fraud; Failure to supervise; violations of Section 10(b) of The Securities Act of 1934, violations of Rule 10b-5 and Texas Civil Statutes. All of these allegations relate to the purchase and sale of common stock.

Unless specifically admitted in his Statement of Answer, Respondents Merrill Lynch and Lake denied all allegations set forth in the Statement of Claim and asserted the following defenses:

1. Claimant's claims are barred by the applicable statute of limitations;
2. Claimant is estopped from asserting any claims against Merrill Lynch;
3. Claimant has waived all claims against Merrill Lynch;
4. Claimant failed to mitigate his damages;
5. Claimant assumed the risk of the investments in question;
6. Claimant's claims are barred by contributory and comparative negligence;
7. Claimant's claims are barred by ratification;
8. Merrill Lynch did not cause any of Claimant's damages.

Respondent Merrill Lynch filed a Counterclaim against Claimant for Breach of Contract.

Unless specifically admitted in its Statement of Answer, Claimant denied the allegations set forth in the counterclaim and requested that the claims against it be dismissed.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$228,000.00
Exemplary Damages (3x actuals)	\$684,000.00
Attorney's Fees	\$ 35,000.00
Costs	Unspecified
Interest	Unspecified

Respondents Merrill Lynch and Murray Lake requested that the Statement of Claim be dismissed in its entirety. In addition, Respondent Merrill Lynch requested an award of attorneys' fees incurred in enforcing its right to arbitration

Claimant requested that the counterclaims against it be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Lake did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, is therefore bound by the determination of the Panel on all issues submitted.

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. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is liable for and shall pay to the Estate & Testamentary Trusts of Eurilla Marie Herrin Mayerle six thousand dollars (\$6000) in compensatory damages.
2. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is liable for and shall pay to the Estate & Testamentary Trust of Eurilla Marie Herrin Mayerle interest charges of 8% on compensatory damages accrued as of February 8, 1996. Interest charges will cease upon complete payment of the award.
3. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is liable and shall pay one hundred and two thousand, six hundred and four dollars (\$102,604) as attorney's fees. In deciding to award attorneys' fees, the panel considered the arguments of the parties, as well as the pleadings filed on their behalf and determined that the authority existed for an award of attorney's fees to the Estate & Testamentary Trusts of Eurilla Marie Herrin Mayerle.
4. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is liable and shall pay to the Estate & Testamentary Trust of Eurilla Marie Herrin Mayerle ten thousand dollars, (\$10,000) in costs.
5. The counterclaim filed by Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is dismissed and denied in its entirety.
6. Except as otherwise specified herein, each party shall bear its own costs.
7. Any and all relief not specifically addressed herein is 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 = \$375.00

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 Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge	= \$2,000
Pre-hearing process fee	= \$ 600
<u>Hearing process fee</u>	<u>= \$3,500</u>
Total Member Fees	= \$6,100

Forum Fees and Assessments

The arbitrator has the authority to assess 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 that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Pre-hearing sessions with Arbitration Panel x \$1,200 = \$4,800.00

Pre-hearing conferences:	July 10, 2000	1 session
	October 24, 2000	1 session
	December 20, 2000	1 session
	March 12, 2001	1 session

Five (5) Hearing sessions x \$1,200 = \$6,000.00

Hearing Dates:	May 14, 2001	2 sessions
	May 15, 2001	2 sessions
	May 16, 2001	1 session

Total Forum Fees = \$10,800.00

The Panel has assessed the entire \$10,800.00 in forum fees to the Respondent, Merrill Lynch Pierce Fenner & Smith Inc.

Adjournment Fees

Adjournments requested during these proceedings:

Request made by Claimant to adjourn the hearing dates of:
November 1-3, 2000 to January 8- 10, 2001 = 1,200.00
(Waived)

Request made by Claimant and Respondents to adjourn the hearing dates of:
January 8-10, 2001 to March 12-15, 2001 = 1,200.00
(Waived)

Request made by Respondent, Merrill Lynch to adjourn to hearing dates of:
January 8-10, 2001 to May 15-17, 2001 = 1,200.00
(Waived)

Fee Summary

Claimant is solely liable for:

Initial Fee	= \$ 375.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance refunded to Claimants	= \$ 1,200.00

Respondent, Merrill Lynch Pierce Fenner & Smith Inc., be and hereby is solely liable for:

Filing Fee/Counterclaim	= \$ 500.00
Forum Fees	= \$10,800.00
<u>Member Fees</u>	<u>= \$ 6,100.00</u>
Total Fees	= \$17,400.00
<u>Less payments</u>	<u>= \$ 7,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 9,800.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Sherry R. Wetsch, Esq. - Public Arbitrator, Presiding Chair

Robert E. Otto - Non-Public, Arbitrator

Michael Hendryx, JD - Public, Arbitrator

Concurring Arbitrators' Signatures

Sherry R. Wetsch, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Robert E. Otto
Non-Public Arbitrator, Arbitrator

Signature Date

Michael Hendryx, JD
Public Arbitrator, Arbitrator

Signature Date

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

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January 8-10, 2001 to March 12-15, 2001 = 1,200.00
(Waived)

Request made by Respondent, Merrill Lynch to adjourn to hearing dates of:
January 8-10, 2001 to May 15-17, 2001 = 1,200.00
(Waived)

Fee Summary

Claimant is solely liable for:

Initial Fee	= \$ 375.00
<u>Less payments</u>	= \$ 1,575.00
Balance refunded to Claimants	= \$ 1,200.00

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

Filing Fee/Counterclaim	= \$ 500.00
Forum Fees	= \$10,800.00
<u>Member Fees</u>	= \$ 6,100.00
Total Fees	= \$17,400.00
<u>Less payments</u>	= \$ 7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 9,800.00

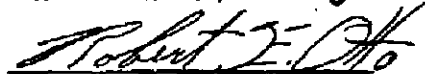
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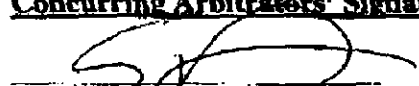
Filing Fee/Counterclaim	= \$ 500.00
Forum Fees	= \$10,800.00
<u>Member Fees</u>	= \$ 6,100.00
Total Fees	= \$17,400.00
<u>Less payments</u>	= \$ 7,600.00
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 Sherry R. Wetsch, Esq.
 Public Arbitrator, Presiding Chair

7-17-01
Signature Date

 Robert E. Otto
 Non-Public Arbitrator, Arbitrator

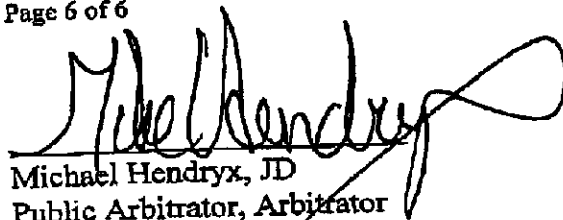
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Michael Hendryx, JD
Public Arbitrator, Arbitrator

4/18/01
Signature/Date

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