

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:
Edward Almquist and Sally Almquist, Claimants v. Merrill Lynch, Pierce, Fenner &
Smith Incorporated, Respondent

Case Number: 05-03362

Hearing Site: Seattle, Washington

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants: Chris R. Youtz, Esq.
Sirianni Youtz Meier & Spoonemore
Seattle, Washington

For Respondent: Curt R. Hinline, Esq.
Dorsey & Whitney LLP
Seattle, Washington

CASE INFORMATION

Statement of Claim filed: June 29, 2005

Claimants' Joint Uniform Submission Agreement signed: June 29, 2005

Statement of Answer filed: October 28, 2005

Respondent's Uniform Submission Agreement signed: August 10, 2005

CASE SUMMARY

Claimants alleged breach of contract, breach of fiduciary duty, unsuitability, negligence, violation of state securities laws, violation of NASD and NYSE rules, and failure to supervise. Claimants' allegations concerned Respondent's alleged failed to properly diversify their accounts. Claimants' causes of action related to unspecified securities.

Respondent denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested unspecified compensatory damages, treble damages not to exceed an additional \$10,000.00 as provided by the Washington Consumer Protection Act, pre-award interest at the legal rate, and attorney's fees.

Respondent requested dismissal of Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

At the close of Claimants' case on October 6, 2006, Respondent moved the Panel to dismiss Claimants' claims in their entirety. On October 13, 2006, after due deliberation, the Panel denied Respondent's motion.

After the first five days of the hearing, arbitrator James Bishop withdrew from the Panel. Ms. Jeanne C. Stilwell replaced Mr. Bishop and the parties accepted the new Panel.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is liable to and shall pay Claimants Edward Almquist and Sally Almquist the sum of \$1,483,723.00 in compensatory damages.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted, including Claimants' requests for interest, punitive damages, and attorney's fees, is denied.

FEEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,000.00/session	= \$ 2,000.00
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Pre-hearing conferences:	October 30, 2006	1 session
	January 8, 2007	1 session

Seventeen (17) Hearing sessions @ \$1,000.00/session	= \$17,000.00
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Hearings:	October 2, 2006	1 session
	October 3, 2006	2 sessions
	October 4, 2006	1 session
	October 5, 2006	2 sessions
	October 6, 2006	3 sessions
	January 3, 2007	2 sessions
	January 4, 2007	2 sessions
	January 17, 2007	2 sessions
	January 31, 2007	2 sessions

Total Forum Fees	= \$19,000.00
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1. The Panel assessed \$9,500.00 of the forum fees jointly and severally to Claimants Edward Almquist and Sally Almquist.
2. The Panel assessed \$9,500.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants requested 3 copies of audio tapes @ \$15.00 each	= \$	45.00
Respondent requested 13 copies of audio tapes @ \$15.00 each	= \$	195.00

Fee Summary

1. Claimants Edward Almquist and Sally Almquist are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$	250.00
Forum Fees	= \$	9,500.00
<u>Administrative Costs</u>	= \$	45.00
Total Fees	= \$	9,795.00
<u>Less payments</u>	= \$	<u>(1,295.00)</u>
Balance Due NASD Dispute Resolution	= \$	8,500.00

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is charged with the following fees and costs:

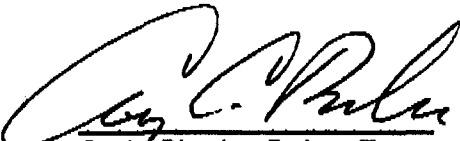
Member Fees	= \$	4,450.00
Forum Fees	= \$	9,500.00
<u>Administrative Costs</u>	= \$	195.00
Total Fees	= \$	14,145.00
<u>Less payments</u>	= \$	<u>(4,970.00)</u>
Balance Due NASD Dispute Resolution	= \$	9,175.00

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

ARBITRATION PANEL

Craig Charles Beles, Esq.	-	Public Arbitrator, Presiding Chair
James B. Parsons, Esq.	-	Public Arbitrator
Jeanne C. Stilwell	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Craig Charles Beles, Esq.
Chair, Public Arbitrator

2/5/07
Signature Date

James B. Parsons, Esq.
Public Arbitrator

Signature Date

Jeanne C. Stilwell
Non-Public Arbitrator

Signature Date

2/5/07
Date of Service

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