

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimant

Jack R. Beattie, individually and on behalf
of any IRA, Trust or other Custodial Accounts

Case Number: 10-03719

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Orlando, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Jack R. Beattie, individually and on behalf of any IRA, Trust or other Custodial Accounts, hereinafter referred to as "Claimant": Philip J. Snyderburn, Esq., Snyderburn, Rishoi & Swann, LLP, Maitland, Florida.

For Merrill Lynch, Pierce, Fenner & Smith Inc., hereinafter referred to as "Respondent": Neil S. Baritz, Esq. and Robert C. Harris, Esq., Baritz & Colman LLP, Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: August 17, 2010.

Claimant signed the Submission Agreement: August 17, 2010.

Statement of Answer filed by Respondent on or about: December 9, 2010.

Respondent signed the Submission Agreement: September 16, 2010.

CASE SUMMARY

Claimant asserted the following causes of action: 1) fraudulent inducement; 2) misrepresentations and omissions; 3) breach of fiduciary duty; 4) negligence; and, 5) breach of contract. The causes of action relate to the sale of a MetLife annuity and the purchase of a Prudential annuity in Claimant's account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested all benefits associated with the MetLife annuity, loss of the 6% guaranteed income stream and 5% death benefit in the amount of \$600,000.00, interest, costs, future lost income, death benefit step-ups, and punitive damages.

In its Statement of Answer, Respondent requested dismissal of this action in its entirety, costs, and such further relief as this Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

During the final hearing, Respondent made an *ore tenus* request for the expungement of the Central Registration Depository (the "CRD") records of Robert Harvie ("Harvie") and Kent Akins ("Akins"), the two brokers who testified, but were not named as parties to this matter. Claimant objected to Respondent's request and the Panel heard oral argument from the parties. Subsequently, the Panel held an executive session and denied the request.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is found liable for negligence and shall pay to Claimant compensatory damages in the amount of \$230,000.00, plus post-judgment interest at the rate of 6% per annum commencing thirty days after the service of the award until paid. Claimant's request for pre-judgment interest is denied.

Respondent's request for expungement of non-parties Harvie and Akin's CRD records is denied.

Any and all relief not specifically addressed herein, including Claimant's request for punitive damages, is denied.

FEES

Pursuant to the Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

FINRA Dispute Resolution assessed a filing fee* for each claim:

Initial claim filing fee = \$1,575.00

**The filing fee is made up of a non-refundable and a refundable portion.*

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. Accordingly, as a party and a member firm Respondent is assessed the following:

Member surcharge = \$2,250.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$4,000.00

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A 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 the Panel @ \$1,200/session = \$ 1,200.00
Pre-hearing conference: February 8, 2011 1 session

Eight (8) Hearing sessions @ \$1,200.00/session = \$ 9,600.00
Hearing Dates: October 24, 2011 2 sessions
October 25, 2011 2 sessions
October 26, 2011 2 sessions
October 27, 2011 2 sessions

Total Hearing Session Fees = \$10,800.00

The Panel has assessed \$5,400.00 of the hearing session fees to Claimant.

The Panel has assessed \$5,400.00 of the hearing session fees to Respondent.

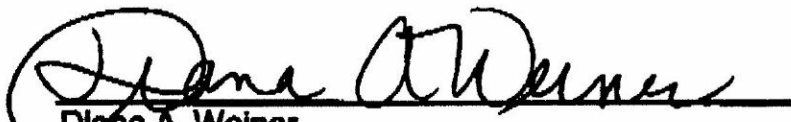
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Diana A. Weiner	-	Public Arbitrator, Presiding Chairperson
Marc T. Danon	-	Public Arbitrator
Marc S. Piven	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures



Diana A. Weiner
Public Arbitrator, Presiding Chairperson

November 3, 2011
Signature Date

Marc T. Danon
Public Arbitrator

Signature Date

Marc S. Piven
Non-Public Arbitrator

Signature Date

Date of Service (For FINRA Dispute Resolution office use only)

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Public Arbitrator

Signature Date

11-3-11

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