

AWARD
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Names of Claimants

M. Kathleen McKinney and
Merrimac Corporation

vs.

Case Number: 06-00182
Hearing Site: Indianapolis, Indiana

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Incorporated

NATURE OF THE DISPUTE

Customers vs. Member

REPRESENTATION OF PARTIES

M. Kathleen McKinney ("McKinney") and Merrimac Corporation ("Merrimac"), hereinafter collectively referred to as "Claimants," were represented by Mark E. Maddox, Esq. and Steven B. Caruso, Esq., Maddox, Hargett & Caruso, P.C., Fishers, Indiana.

Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Respondent") was represented by Anne N. DePrez, Esq., Barnes & Thornburg, LLP, Indianapolis, Indiana.

CASE INFORMATION

The Statement of Claim was filed on or about January 12, 2006. The Submission Agreement of Claimant McKinney was signed on or about December 29, 2005. The Submission Agreement of Claimant Merrimac was signed on or about December 29, 2005 by M. Kathleen McKinney.

The Statement of Answer was filed by Respondent on or about April 19, 2006. The Submission Agreement of Respondent was signed on or about February 1, 2006.

CASE SUMMARY

Claimants asserted the following causes of action: implementing unsuitable investments and trading activity; negligence; misrepresentations and omissions of material fact; violations of the Indiana Securities Act and Regulations thereunder; violation of the NASD Conduct Rules and NYSE Rules; breach of contract; breach of fiduciary duty; constructive

fraud; respondeat superior; negligent supervision; common law fraud and misrepresentation; and conversion. The causes of action related to the trading conducted by Respondent's representative in the Claimants' accounts. Claimants alleged that in spite of their never communicating with Respondent or its representative, numerous transactions occurred in their accounts involving the purchase of securities, sale of securities, use of margin, and transfer of funds from one account to another. Claimants further alleged that Respondent may have provided blank authorization documents to McKinney's ex-husband who forged the documents to give him discretionary trading authorization. In addition, it was alleged that Claimant McKinley was induced to enter into a Liquidity Contract which she didn't understand and resulted in the loss of her Bank One stock that constituted a large part of her account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants' claims are barred by the applicable statute of limitation; claims involving transactions prior to January 26, 1999, are ineligible for submission to arbitration pursuant to Rule 10304 of the Code of Arbitration; Claimants and/or their authorized agent and officer authorized every transaction in the accounts and accordingly, have ratified the transactions and waived their claims and are estopped from seeking recovery from Respondent; Claimants failed to mitigate their damages; the Claimants contributory fault was the proximate cause of the alleged damages; and Claimants are not entitled to punitive damages.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$1,000,000.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Based upon the evidence presented, at hearing the Claimants amended the relief request to in excess of \$5,000,000.00 in compensatory damages.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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 the 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, Incorporated, is liable for and shall pay to Claimant, M. Kathleen McKinney, the sum of \$3,321,442.00 in compensatory damages;
- 2.) The claims of Claimant, Merrimac Corporation, are denied and dismissed with prejudice;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution will retain the non-refundable filing fee 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 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, Pierce, Fenner & Smith, Inc.

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

Adjournment Fees

Adjournments granted during these proceedings:

February 19-22, 2007 adjournment requested jointly by the parties = \$ 1,200.00

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

February 19-22, 2007 adjournment requested jointly by the parties = \$ 300.00

Forum Fees and Assessments

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

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00
Pre-hearing conference: June 21, 2006 1 session

Eight (8) Hearing sessions x \$1,200.00 = \$ 9,600.00
Hearing Dates: October 8, 2007 2 sessions
October 9, 2007 2 sessions
October 10, 2007 2 sessions
October 11, 2007 2 sessions

Total Forum Fees = \$10,800 .00

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

FEE SUMMARY

Claimants, M. Kathleen McKinney and Merrimac Corporation, are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 600.00
<u>Three-Day Cancellation Fee</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 1,125.00
<u>Less payments</u>	<u>= \$ 2,325.00</u>
Refund Due Claimants	= \$ 1,200.00

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

Member Fees	= \$ 7,000.00
Adjournment Fee	= \$ 600.00
Three-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 10,800.00
<hr/> Total Fees	<hr/> = \$ 18,550.00
Less payments	= \$ 7,750.00
<hr/> Balance Due FINRA Dispute Resolution	<hr/> = \$ 10,800.00

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

ARBITRATION PANEL

Joseph V. Simeri, JD - Public Arbitrator, Presiding Chair
Daniel P. Urban - Public Arbitrator
Zachary Ryan Schroer - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Joseph V. Simeri, JD
Public Arbitrator, Presiding Chair

Signature Date

Daniel P. Urban
Public Arbitrator

Signature Date

Zachary Ryan Schroer
Non-Public Arbitrator

Signature Date

Date of Service (For FINRA office use only)

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

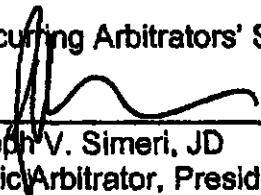
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Public Arbitrator, Presiding Chair

10.18.07

Signature Date

Daniel P. Urban
Public Arbitrator

Signature Date

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Non-Public Arbitrator

Signature Date

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