IN THE MATTER OF THE ARBITRATION BETWEEN:

DOUGLAS T. AND DEBORAH L. MILLAR v. MERRILL LYNCH PIERCE, FENNER & SMITH INC.

JAMS Case Number: 1410003079

FINAL AWARD

This is a claim for breach of contract, negligence, and fraud seeking money damages of $7,783,374 plus indeterminate damages (Statement of Claim) or, in the alternative, $16,863,036 plus punitive damages or fees (Post Hearing Brief). The claim was filed with the New York Stock Exchange (NYSE) on June 29, 2001. The Claimants were represented by Hergenroeder, Rega & Sommer, LLC (Robert B. Sommer, Esq. and James L. McKenna, Jr., Esq.) and the Respondent by Cohen & Grigsby, P.C. (Richard R. Nelson, II, Esq., and Anthony Cillo, Esq.). The case involved a concentrated position in FreeMarkets, Inc. stock. A Pre-Hearing Conference was held on January 22, 2002. A discovery conference call was held on Wednesday, February 1, 2002, with the Chair, and three (3) pre-hearing Orders were issued by the panel. The arbitration hearing was held in person in Pittsburgh, PA, on eight separate days, from May 6, 2002, through May 9, 2002, and May 13, 2002, through May 16, 2002. Final oral argument took place telephonically on June 11, 2002, after the submission of post hearing briefs by the parties.

A majority of the arbitrators have concluded as follows:

1. The Respondent's Motion for Partial Summary Judgment is denied.
2. Merrill Lynch breached certain contractual obligations and duties it owed Claimants under the circumstances of this particular broker - customer relationship, including the duty of the New York Private Advisory Services group to work with Claimants' Pittsburgh Financial Consultants to formulate and implement strategies with the most suitable recommendations for Claimants' individual needs and objectives, the duty to develop and adequately explain to Claimants the advantages and disadvantages of various needs-based solutions for their highly concentrated position, and the duty to act with reasonable care and diligence in responding to Claimants' instructions. These instructions included what was acknowledged by the agent of Merrill Lynch with responsibility for the relationship with Claimants to be, at the very least, a clear and unambiguous indication of the Claimants' desire to sell a significant part, 100,000 shares, of their FreeMarkets holdings on September 5, 2000. Moreover, from August 29, 2000 through September 5, 2000, FreeMarkets stock had finally reached a level at

which sale of 100,000 shares would achieve Claimants' clearly stated objectives. Accordingly, Respondent is liable for not effecting the requested, and plainly called for, sale of 100,000 shares on September 5, 2000. These breaches damaged claimants by depriving them of the extent of monetization of their FreeMarkets stock which would have occurred if Merrill Lynch had properly discharged its duties. Claimants were not contributorily negligent in causing such damages.

3. Within a reasonable time after September 5, 2000, Claimants knew or should have known that no stock was sold that day and had a duty to take reasonable steps to mitigate their damages. However, given Dave Foster's urging to "stay the course," Scott Umstead's assurance that Dave was the best Merrill had, the evaluation of Claimants' longtime financial advisor Todd Foster that they were in good shape and should indeed stay the course, and the continuing recommendations of the Merrill Lynch Research Department to buy and accumulate FreeMarkets, Inc. stock, the duty to mitigate did not mandate that Claimants sell immediately. The majority finds that, following the meeting of December 22, 2000, which left Mr. Millar with the feeling that Merrill Lynch representatives were not being honest in assuring him that they could achieve all of his objectives if given sufficient time, such a duty clearly arose, and Claimants are charged with a sale in mitigation at the average price the first business day following that meeting. Therefore, the fair measure of claimants' damages resulting from Respondent's failure to effect the September 5, 2000 sale is the difference between the net proceeds of a sale of 100,000 shares of FreeMarkets, Inc. stock at the average price on that day and the sale in mitigation on December 26, 2000, which is charged to the Claimants.

4. Claimants are also entitled to be compensated for being deprived of the use of this money from September 5, 2000 to date. A fair and reasonable way to do so, based on the testimony, is to award Claimants interest at the ten year tax free municipal bond rate on September 5, 2000, increased to account for the fact that Claimants will be required to pay taxes on this award at ordinary income rates. Applying such interest rate (7.69%) initially to the entire September 5, 2000, sale balance and then on the reduced balance after charging the sale in mitigation on December 26, 2000, brings Claimants' total damages to $7,741,305 through June 30, 2002.

5. The Claimants have asserted, and the majority finds, that during the lockup period Merrill Lynch also failed in its duty to identify and explain to Claimants monetization strategies appropriate to their objectives and circumstances. Additionally, Claimants contend, and the majority finds, that the covered call strategy recommended and carried out by Respondent postponed monetization and was inconsistent with Claimants' stated objectives. However, claimants have not proven that such failures caused them damages which exceed the amount awarded above plus the premium income derived from covered calls. Thus, no additional damages are awarded for these further breaches.

6. Claimants have not established their claims for placing unsuitable investments in Mrs. Millar's retirement account, or for punitive damages, or for attorneys fees and arbitration costs. Thus, claimants are awarded nothing on these claims.

ACCORDINGLY, it is hereby awarded as follows:

1. Respondent Merrill Lynch shall pay Claimants Douglas and Deborah Millar the sum of $7,741,305 plus interest at the rate of 7.69% per annum from July 1, 2002, until the award is paid.

2. The parties shall bear their own costs.

The undersigned arbitrators do hereby certify that the foregoing is the award of the majority of the panel.

Stanley S. Harris	Philip S. Cottone	Curtis E. von Kann, Chairman

Date: July 15, 2002

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DOUGLAS T. AND DEBORAH L. MILLAR,	)	
	)	
CLAIMANTS,	)	
	)	
v.	)	JAMS NO. 1410003079
	)	
MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.,	)	
	)	
	)	
RESPONDENT.	)	

DISSENTING STATEMENT OF ARBITRATOR HARRIS

Based upon the totality of the testimony and the exhibits adduced at the hearing, and giving due effect – of great importance to me – to the conduct of the parties during the time period at issue, I conclude that there is no legal liability on the part of respondent Merrill Lynch for its necessarily limited role in handling the non-discretionary accounts of the experienced and knowledgeable claimant Douglas T. Millar (and his family). Accordingly, I respectfully dissent from the majority's finding of liability on the part of respondent, as well as from its computation of the damages it awards.

Recognizing the nature of this proceeding, I resist expressing my considerable areas of disagreement in detail. I do, however, note my belief that the true circumstances and the proper consequences thereof are validly set forth in respondent's post-hearing brief and reply brief.

Stanley S. Harris

Stanley S. Harris
Arbitrator

Date: 7/15/02