

**Award**  
**NASD Dispute Resolution, Inc.**

---

In the Matter of the Arbitration Between:

Sal D. Cianella, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Inc., Respondent

Case Number: 00-03453

Hearing Site: Los Angeles, California

---

**REPRESENTATION OF PARTIES**

For Claimant:

William P. Torngren, Esq.  
Law Offices of William P. Torngren  
Sacramento, California

For Respondent:

Eric J. Glassman, Esq.  
Mennemeier, Glassman & Stroud, LLP  
Sacramento, California

**CASE INFORMATION**

Statement of Claim filed: August 7, 2000

Claimant's Uniform Submission Agreement signed: August 2, 2000

Statement of Answer filed by Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: October 4, 2000

Respondent's Uniform Submission Agreement signed: October 4, 2000

**CASE SUMMARY**

Claimant alleged breach of fiduciary duty, breach of contract, misrepresentation, unsuitability, failure to supervise, negligence, and violation of NASD rules in connection with the purchase an/or sale of options.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$342,864.97 plus interest from the date of loss to the date of the award, general damages according to proof, attorney's fees, and costs.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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) Claimant's Statement of Claim is denied in its entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 300.00
--------------------------	-------------

#### **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 Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 2,500.00
<b>Total Member Fees</b>	<b>= \$ 4,600.00</b>

### **Adjournment Fees**

The following adjournment fees are assessed:

Adjournment requested by Merrill Lynch, Pierce, Fenner & Smith Inc.  
of hearing dates October 2 - 5, 2001: = \$ 0.00  
The Panel waived the \$1,125.00 fee.

### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450/session = \$ 450.00  
Pre-hearing conference: August 10, 2001 1 session

2 Pre-hearing conference sessions with the Panel @ \$ 1,125/session = \$2,250.00  
Pre-hearing conferences: February 5, 2001 1 session  
February 16, 2001 1 session

6 Hearing sessions @ \$1,125/session = \$6,750.00  
Hearings: November 19, 2001 2 sessions  
November 20, 2001 3 sessions  
November 21, 2001 1 session

---

**Total Forum Fees = \$9,450.00**

1. The Panel assessed \$4,725.00 of the forum fees to Claimant Sal D. Cianella.
2. The Panel assessed \$4,725.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner, & Smith, Inc.

### **Fee Summary**

1. Claimant, Sal D. Cianella is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,725.00
Total Fees	= \$ 5,025.00
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,600.00

NASD Dispute Resolution, Inc.

Arbitration No. 00-03453

Award Page 4 of 5

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

Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	<u>= \$ 4,725.00</u>
Total Fees	= \$ 9,325.00
<u>Less payments</u>	<u>= \$(5,600.00)</u>
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 3,725.00</b>

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

**ARBITRATION PANEL**

<b>Richard B. Chess, Jr., Esq.</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Michael D. Harrison, Esq.</b>	-	<b>Public Arbitrator</b>
<b>Richard E. Bullock</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

  
**Richard B. Chess, Jr., Esq.**  
Chair, Public Arbitrator

Nov. 21, 2001  
Signature Date

**Michael D. Harrison, Esq.**  
Public Arbitrator

Signature Date

**Michael D. Harrison**  
Public Arbitrator

**Richard E. Bullock**  
Non-Public Arbitrator

Signature Date

Nov 27, 2001  
Date of Service

ARBITRATION PANEL

<i>Richard B. Chess, Jr., Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Michael D. Harrison, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Richard B. Bullock</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Richard B. Chess, Jr., Esq.  
Chair, Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
*M. Harrison*  
Michael D. Harrison, Esq.  
Public Arbitrator

\_\_\_\_\_  
*11/21/01*  
Signature Date - Michael D. Harrison, Esq.  
Public Arbitrator

\_\_\_\_\_  
Richard B. Bullock  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
*11-27-01*  
Date of Service

NASD Dispute Resolution, Inc.  
Arbitration No. 00-03453  
Award Page 5 of 5

**ARBITRATION PANEL**

*Richard B. Chess, Jr., Esq.*  
*Michael D. Harrison, Esq.*  
*Richard B. Bullock*

*Public Arbitrator, Presiding Chair*  
*Public Arbitrator*  
*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

Richard B. Chess, Jr., Esq.  
Chair, Public Arbitrator

Signature Date

Michael D. Harrison, Esq.  
Public Arbitrator

Signature Date

Michael D. Harrison, Esq.  
Public Arbitrator

Richard B. Bullock  
Richard B. Bullock  
Non-Public Arbitrator

Signature Date

11-27-01  
Date of Service