

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

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In the Matter of the Arbitration Between:  
Gold Family Trust, Claimant v. Miller & Schroeder Financial, Inc., Respondent

Case Number: 00-03908

Hearing Site: Los Angeles, California

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**REPRESENTATION OF PARTIES**

For Claimant:

Thomas K. Bourke, Esq.  
Law Offices of Thomas K. Bourke  
Los Angeles, California

For Respondent:

Lindsay G. Arthur, Jr., Esq.  
Michael G. Brennan, Esq.  
Keesha M. Gaskins, Esq.  
Arthur, Chapman, Kettering,  
Smetak & Pikala, P.A.  
Minneapolis, Minnesota

Henry H. Rossbacher, Esq.  
Rossbacher & Associates  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: October 31, 2000

Claimant's Uniform Submission Agreement signed: September 7, 2000

Statement of Answer filed by Respondent Miller & Schroeder Financial, Inc.: January 3, 2001

Respondent's Uniform Submission Agreement signed: December 21, 2001

**CASE SUMMARY**

Claimant alleged unsuitability, breach of fiduciary duty, elder abuse pursuant to California Welfare Code section 15610.27, and fraud pursuant to California Civil Code sections 1572(2), 1573, and 1710(2).

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

### **RELIEF REQUESTED**

Claimant requested \$500,000.00 in total damages consisting of \$80,000.00 in compensatory damages, and an unspecified amount for emotional distress and punitive damages. Claimant also requested interest, arbitration costs, expert witness fees, attorney's fees, and rescission pursuant to California Civil Code Section 1689(b)(1).

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety, attorney's fees, and arbitration fees.

### **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) Respondent is liable to and shall pay Claimant \$82,504.00 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimant \$20,000.00 in accrued but unpaid interest on the investment bonds.
- 3) Respondent is liable to and shall pay Claimant \$13,421.00 in arbitration costs.
- 4) Respondent is liable to and shall pay Claimant 10% simple interest per annum on \$115,925.00 from the date of the Award until paid in full.
- 5) Respondent is liable to and shall pay Claimant \$300.00 for reimbursement of filing fees.
- 6) Respondent is liable to and shall pay Claimant \$189,000.00 in punitive damages, pursuant to California Civil Code §3294.
- 7) Claimant may elect to retain ownership of the subject bonds.
- 8) All other relief requested and 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 which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Miller & Schroeder Financial, Inc., is a Respondent and the following fees are assessed:

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

### **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/Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: October 4, 2001	1 session
1 Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: August 7, 2001	1 session
3 Hearing sessions @ \$1,125.00/session	= \$ 3,375.00
Hearing: November 27, 2001	3 sessions
<b>Total Forum Fees</b>	<b>= \$ 4,950.00</b>

The Panel assessed \$ 4,950.00 of the forum fees to Miller & Schroeder Financial, Inc.

### **Fee Summary**

1. Claimant, Gold Family Trust, is charged with the following fees and costs:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$(1,425.00)
<b>Refund Due Claimant</b>	<b>= \$(1,125.00)</b>

2. Respondent, Miller & Schroeder Financial, Inc., is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 4,950.00
Total Fees	= \$ 9,550.00
<u>Less payments</u>	= \$( 1,500.00)
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 8,050.00</b>

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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**

John F. Lagle III, Esq.  
Steven A. Wawra, Esq.  
Richard A. England

Public Arbitrator, Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
John F. Lagle III, Esq.  
Public Arbitrator, Chair

 15, 2002  
Signature Date

Steve A. Wawra, Esq.  
Public Arbitrator

Signature Date

Richard A. England  
Non-Public Arbitrator

Signature Date

1/17/02  
Date of Service

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Steven A. Wawra, Esq.  
Richard A. England

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Public Arbitrator  
Non-Public Arbitrator

Concurring Arbitrators' Signatures

John F. Lagle III, Esq.  
Public Arbitrator, Chair

Signature Date

  
Steve A. Wawra, Esq.  
Public Arbitrator

1/16/02  
Signature Date

Richard A. England  
Non-Public Arbitrator

Signature Date

1/17/02  
Date of Service

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Richard A. England

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Public Arbitrator  
Non-Public Arbitrator


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John F. Lagle III, Esq.  
Public Arbitrator, Chair

Signature Date

Steven A. Wawra, Esq.  
Public Arbitrator

Signature Date

  
Richard A. England  
Non-Public Arbitrator

11/15/2002  
Signature Date

11/17/02  
Date of Service