

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Dr. Vincent Gentiluomo, (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc., Malcolm Elsoffer, and Andrew Elsoffer, (Respondents)

Case Number: 00-05585

Hearing Site: Cleveland, Ohio

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**REPRESENTATION OF PARTIES**

Claimant, Dr. Vincent Gentiluomo, hereinafter referred to as "Claimant": Anthony J. Hartman, Esq., Hermann, Cain & Schneider, Cleveland, OH.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"), Malcolm Elsoffer ("M. Elsoffer"), and Andrew Elsoffer ("A. Elsoffer"), hereinafter collectively referred to as "Respondents": Brian F. Amery, Esq., Bressler, Amery & Ross, P.C., Morristown, NJ.

Previously represented by: William J. Manning, Jr., Esq., Vice President and Senior Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: December 12, 2000.

Claimant signed the Uniform Submission Agreement: November 16, 2000.

Joint Statement of Answer filed by Respondents on or about: February 14, 2001.

Merrill signed the Uniform Submission Agreement: February 12, 2001.

M. Elsoffer signed the Uniform Submission Agreement: January 5, 2001.

A. Elsoffer signed the Uniform Submission Agreement: January 5, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; negligence; fraud; breach of contract; and respondeat superior. Claimant's claim involved the stocks of AT&T and WorldCom and the Muniholdings Insured Fund III, Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant is barred from any recovery because

Claimant directed, authorized, consented to, acquiesced in, and ratified all transactions in the account; Claimant made all the investments decisions in regard to this account and any losses which may have been suffered by Claimant were caused by the investment decisions made by Claimant and due to market conditions outside the control of Respondents; Respondents are not liable to Claimant in any amount because at all times relevant herein, Respondents acted properly and in good faith with regard to Claimant's accounts.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the sum of \$200,000.00, plus reasonable interest from June 1, 1999 to the date of judgment, together with all commissions paid to Merrill. Claimant further requested that costs and fees of the NASD be assessed against Merrill. Finally, Claimant requested that he be awarded the sum of \$100,000.00 in punitive damages, and attorney fees incurred in prosecuting this action.

Respondents requested that Claimant's claims for damages be denied in all respects, that the cost of this action, including attorneys fees, be assessed against Claimant.

### **OTHER ISSUES CONSIDERED AND 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 evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

#### 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 persons at the time of the events giving rise to the dispute. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,500.00

#### Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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 a single arbitrator x \$450.00 = \$ 450.00

Pre-hearing conference: September 13, 2001 1 session

Two (2) Pre-hearing sessions with Panel x \$1,125.00 = \$2,250.00

Pre-hearing conferences: June 26, 2001 1 session

February 8, 2002 1 session

Four (4) Hearing sessions x \$1,125.00 = \$4,500.00

Hearing Dates: October 8, 2002 2 sessions

October 9, 2002 2 sessions

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Total Forum Fees = \$7,200.00

1. The Panel has assessed \$3,600.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,600.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$3,600.00
Total Fees	= \$3,900.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$2,475.00

2. Merrill is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
Less payments	= \$4,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

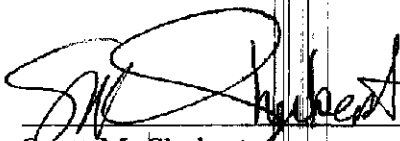
Forum Fees	= \$3,600.00
Total Fees	= \$3,600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,600.00

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

**ARBITRATION PANEL**

Michael L. King	-	Public Arbitrator, Presiding Chair
Scott M. Shubert	-	Public Arbitrator
Donald W. Rioux	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Scott M. Shubert  
Public Arbitrator

10/27/2002

Signature Date

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Donald W. Rioux  
Non-Public Arbitrator

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Signature Date

**Dissenting Arbitrator's Signature**

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Michael L. King  
Public Arbitrator, Presiding Chair

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Signature Date

November 5, 2002

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Michael L. King	-	Public Arbitrator, Presiding Chair
Scott M. Shubert	-	Public Arbitrator
Donald W. Rioux	-	Non-Public Arbitrator

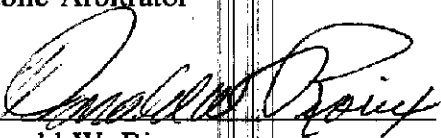
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Scott M. Shubert  
Public Arbitrator

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Signature Date



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Donald W. Rioux  
Non-Public Arbitrator

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**Dissenting Arbitrator's Signature**

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Michael L. King  
Public Arbitrator, Presiding Chair

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Public Arbitrator

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Signature Date

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Donald W. Rioux  
Non-Public Arbitrator

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Signature Date

**Dissenting Arbitrator's Signature**

  
Michael L. King  
Public Arbitrator, Presiding Chair

October 26, 2002  
Signature Date

November 5, 2002  
Date of Service (For NASD Dispute Resolution use only)