

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

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In the Matter of the Arbitration Between:

Erwin J. and Andrea M. Shustak, Claimants v. Miller & Schroeder Financial, Inc., Respondent

Case Number: 01-01492

Hearing Site: San Diego, California

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**REPRESENTATION OF PARTIES**

For Claimants:

Erwin J. Shustak, Esq.  
Shustak Jalil & Heller  
San Diego, California

For Respondent:

Lindsay G. Arthur, Jr., Esq.  
Arthur, Chapman, Kettering,  
Smetak & Pikala, P.A.  
Minneapolis, Minnesota

**CASE INFORMATION**

Statement of Claim filed: March 22, 2001

Claimants' Uniform Submission Agreement signed: March 22, 2001

Statement of Answer filed by Respondent Miller & Schroeder Financial, Inc.: May 2, 2001

**CASE SUMMARY**

Claimants alleged breach of fiduciary duty, misrepresentation, common law negligence, violation of § 10 (b) of the Securities Exchange Act of 1934, and Rule 10 (b)(5), common law fraud, unsuitability, violation of California Corporations Code §2540, and unjust enrichment. The dispute involved the purchase and/or sale of Desert Hot Springs California and Chicago Health Care Facility bonds.

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

### **RELIEF REQUESTED**

Claimants requested rescission of the purchase of Desert Hot Springs California and Chicago Health Care Facility bonds, or, in the alternative, compensatory damages of \$10,000.00, interest, attorney's fees and arbitration costs.

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

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

On November 20, 2001, NASD Dispute Resolution, Inc. received notice that Respondent Miller & Schroeder Financial, Inc. would not defend itself at the evidentiary hearing.

Respondent Miller & Schroeder Financial, Inc. did not file with the NASD Dispute Resolution, Inc. a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, is bound by the determination of the Arbitrator on all issues submitted.

The participating parties agreed that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, testimony, and evidence presented at the hearing, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable to and shall pay Claimants \$11,805.28 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimants interest on the sum of \$11,805.28 at the rate of 10% per annum simple interest from August 2, 1999 until paid in full.
- 3) Respondent is liable to and shall pay Claimants \$75.00 for reimbursement of filing fees.
- 4) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 5) 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	= \$ 75.00
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#### **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 party and the following fees are assessed:

<u>Member Surcharge</u>	= \$ 300.00
<b>Total Member Fees</b>	<b>= \$ 300.00</b>

#### **Forum Fees and Assessments**

The Arbitrator 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 Arbitrator. The following fees are assessed:

2 Pre-hearing conference sessions with the Arbitrator @ \$ 250.00/session	= \$ 500.00
Pre-hearing conferences: August 16, 2001	1 session
August 20, 2001	1 session
1 Hearing session @ \$250.00/session	= \$ 250.00
Hearing: November 30, 2001	1 session
<b>Total Forum Fees</b>	<b>= \$ 750.00</b>

The Arbitrator assessed \$ 750.00 of the forum fees to Respondent Miller & Schroeder Financial, Inc.

**Fee Summary**

1. Claimants Erwin J. and Andrea M. Shustak are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 75.00
<u>Less payments</u>	= \$ (575.00)
<b>Refund Due Claimants</b>	<b>= \$ (500.00)</b>

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

Member Fees	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 750.00</u>
Total Fees	= \$ 1,050.00
<u>Less payments</u>	<u>= \$ (300.00)</u>
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 750.00</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.

NASD Dispute Resolution, Inc.

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**ARBITRATOR**

Diane R. Smith, Esq.

Public Arbitrator, Presiding Chair

**Arbitrator's Signature**



Diane R. Smith, Esq.  
Chair, Public Arbitrator

12/10/01  
Signature Date

12/10/01  
Date of Service