

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Genevieve Mercer

and

02-04804  
Phoenix, Arizona

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

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**REPRESENTATION OF PARTIES**

Genevieve Mercer ("**Claimant**") appeared *pro se*.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("**Respondent**") was represented by Eric J. Glassman, Esq., Mennemeier Glassman & Stroud, LLP, Sacramento, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 15, 2002. Letter dated November 11, 2002 (Re: clarification of Statement of Claim). Submission Agreement of Claimant Genevieve Mercer was signed on August 9, 2002.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. filed Respondent's Answer to Statement of Claim on or about October 21, 2002. Submission Agreement of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. was signed on October 17, 2002.

**CASE SUMMARY**

In her Statement of Claim, Claimant alleged as follows:

Merrill Lynch and its internet research analysts knowingly defrauded me with false and misleading analyst reports of INSP and AETH stocks. They failed to disclose that the ratings were not based on company fundamentals nor did they tell me that its BUY recommendations and price targets for these companies were driven by its efforts to attract lucrative investment banking business. It failed to disclose a significant conflict of interest between their investment banking and research departments that shamefully enabled their research analysts to gain compensatory rewards and big profits for Merrill Lynch at the expense of its small investors, such as myself.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated as follows:

Claimant is a sophisticated, aggressive investor who speculated in technology and biomedical stocks in an extremely volatile market. When the stock market was up, she did very well. When the market suffered sharp declines in 2000 and 2001, Claimant, like many investors, suffered significant losses. Claimant's losses were further magnified by her use of margin and her intense trading activity which included repeatedly speculating in positions held open for only a matter of days.

Claimant bases her claim entirely on the unproven allegations contained in an affidavit filed by the New York Attorney General. Her claim is fatally flawed in three respects. First, her stocks declined in value because of market conditions, not because of Merrill Lynch's research. Second, Claimant's investment decisions were not dependent on Merrill Lynch's research opinions. Instead, she based her decisions on a wide variety of sources, including family members and her own independent research. Third, the opinions expressed by Merrill Lynch's analysts in their research were forward-looking expressions of opinion, which cannot, by their very nature, constitute a basis for liability.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$49,184.64, interest in the amount of \$4,255.25, reimbursement of filing fees and costs that may be generated during the discovery phase.

Respondent requested that the Arbitration Panel enter an award in it's favor dismissing the Statement of Claim, assess attorneys' fees and costs to Claimant, and grant such other and further relief as is deemed just and proper.

#### **OTHER ISSUES CONSIDERED & DECIDED**

The Statement of Claim filed in this matter included Henry Blodget as a Respondent. At the hearing of this matter, Claimant dismissed Henry Blodget, without prejudice. As a result, the Arbitrator only considered the claims as asserted against Merrill Lynch, Pierce, Fenner & Smith, Inc.

The parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

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

1. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall be and hereby is liable for and shall pay to Claimant the sum of \$6,500.00 (**Six Thousand Five Hundred Dollars and No Cents**) as compensatory damages.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **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 = \$175.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is(are) Merrill Lynch, Pierce, Fenner & Smith, Inc.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

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

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with a single arbitrator x \$450.00 = \$450.00  
Pre-hearing conference(s): March 7, 2003 1 session

Two (2) Hearing sessions x \$450.00 = \$900.00  
Hearing Date(s): July 15, 2003 2 sessions

Total Forum Fees = \$1,350.00

The Arbitration Panel has assessed \$675.00 of the forum fees to Genevieve Mercer.

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#### Fee Summary

Claimant, Genevieve Mercer, shall be and hereby is liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 675.00
Total Fees	= \$ 850.00
<u>Less payments</u>	= \$ 625.00
Balance Due NASD Dispute Resolution	= \$ 225.00

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., shall be and hereby is liable for:

Member Fees	= \$2,625.00
<u>Forum Fees</u>	= \$ 675.00
Total Fees	= \$3,300.00
<u>Less payments</u>	= \$3,625.00
Balance to be refunded by NASD Dispute Resolution	= \$ 325.00

**All balances are due to NASD Dispute Resolution**

#### ARBITRATION PANEL

Jerome K. Altshuler - Public Arbitrator, Presiding Chair

Concurring Arbitrator:

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Jerome K. Altshuler  
Public Arbitrator, Presiding Chair

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Signature Date

NASD Dispute Resolution, Inc.  
Arbitration No. 02-04804  
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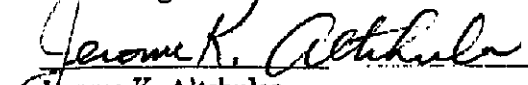
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