

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

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In the Matter of the Arbitration Between:

Scott C. Seibel and Sharon R. Seibel, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc.  
dba Merrill Lynch Direct, Respondent

Case Number: 02-05509

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

For Claimants:

Mitchell S. Ostwald, Esq.  
Sacramento, California

For Respondent:

Paul J. Lambert, Esq.  
Gerard P. Finn, Esq.  
Bingham McCutchen LLP  
Washington, DC

**CASE INFORMATION**

Statement of Claim filed: September 12, 2002

Claimants' Uniform Submission Agreement signed: August 27, 2002

Statement of Answer filed by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. dba  
Merrill Lynch Direct ("Merrill Lynch"): November 25, 2002

Respondent Merrill Lynch's Uniform Submission Agreement signed: November 25, 2002

**CASE SUMMARY**

Claimants alleged that the above-referenced dispute involves investments in InfoSpace and Aether Systems stocks and investments in additional securities, mostly from companies in the high technology sector. Claimants alleged that they suffered damages because of Respondent's unfair business activities that include fraud, misrepresentation, deception, concealment, omission of material fact, and representations beyond reasonable expectations.

Respondent denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondent also asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested:

1. Actual damages, exclusive of legal interest, in an amount in excess of \$196,000.00;
2. Disgorgement of all ill-gotten gains, commissions, and/or compensation associated with the Seibel's account by Respondent, plus interest thereon at the legal rate. Such amount to be quantified and presented before the arbitration panel;
3. All other compensatory damages according to proof, plus interest thereon at the legal rate;
4. All of Seibel's costs, expenses, and disbursements in pursuing this arbitration proceeding;
5. Full reimbursement of all filing and forum fees;
6. An award of punitive damages in an amount to be determined by the arbitrators;
7. All reasonable attorney's fees; and
8. Such other relief as the arbitration panel deems just and proper.

Respondent requested that Claimants' Statement of Claim be dismissed with prejudice, and that it be awarded attorney's fees and costs.

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

On March 28, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On April 21, 2003, Respondent Merrill Lynch's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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 for and shall pay to Claimants the sum of \$15,000.00.
- 2) Claimants' claims for punitive damages are denied.

- 3) Each party shall bear its own costs, including attorney's fees.
- 4) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$300.00
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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 that gave rise to the dispute, claim, or controversy. Accordingly, Merrill Lynch is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

#### **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:

(3) Pre-hearing conference sessions with the Panel @ \$1,125.00.00/session= \$3,375.00

Pre-hearing conferences:	June 30, 2003	1 session
	August 18, 2003	1 session
	September 8, 2003	1 session

(6) Hearing sessions @ \$1,125.00/session = \$6,750.00

Hearing:	September 29, 2003	2 sessions
	September 30, 2003	2 sessions
	October 1, 2003	2 sessions

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Total Forum Fees	= \$10,125.00
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The Panel assessed \$6,075.00 in forum fees to Claimants.

The Panel assessed \$4,050.00 in forum fees to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

The parties did not incur administrative costs.

**Fee Summary**

1. Claimants are charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 6,075.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 6,375.00
<u>Less Payments</u>	= \$ (1,425.00)
Balance Due NASD-DR	= \$ 4,950.00

2. Respondent, Merrill Lynch, is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 4,050.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 9,250.00
<u>Less Payments</u>	= \$ (6,700.00)
Balance Due NASD-DR	= \$ 2,550.00

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

**ARBITRATION PANEL**

Lester Friedman, Esq.	-	Public Arbitrator, Presiding Chair
Matthew J. Williams	-	Public Arbitrator
Greg N. Tcherkoyan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Lester Friedman, Esq.  
Chair, Public Arbitrator

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Signature Date

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Matthew J. Williams  
Public Arbitrator

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Signature Date

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Greg N. Tcherkoyan  
Non-Public Arbitrator

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Signature Date

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Date of Service

**ARBITRATION PANEL**

Lester Friedman, Esq. -  
Matthew J. Williams -  
Greg N. Tcherkoyan -

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Lester Friedman, Esq.  
Chair, Public Arbitrator

10/23/03  
Signature Date

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Matthew J. Williams  
Public Arbitrator

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

\_\_\_\_\_  
Greg N. Tcherkoyan  
Non-Public Arbitrator

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

10/30/03  
Date of Service

**ARBITRATION PANEL**

Lester Friedman, Esq.	-	Public Arbitrator, Presiding Chair
Matthew J. Williams	-	Public Arbitrator
Greg N. Tcherkoyan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Lester Friedman, Esq.  
Chair, Public Arbitrator

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Signature Date

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Matthew J. Williams  
Public Arbitrator

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Signature Date

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Greg N. Tcherkoyan  
Non-Public Arbitrator

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Signature Date

OCT 27, 2002

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10/30/03  
Date of Service

**ARBITRATION PANEL**

Lester Friedman, Esq.	-	Public Arbitrator, Presiding Chair
Matthew J. Williams	-	Public Arbitrator
Greg N. Tcherkoyan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Lester Friedman, Esq.  
Chair, Public Arbitrator

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Signature Date

M. Williams  
Matthew J. Williams  
Public Arbitrator

24 Oct. 2003  
Signature Date

\_\_\_\_\_  
Greg N. Tcherkoyan  
Non-Public Arbitrator

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

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Date of Service