

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

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In the Matter of the Arbitration Between:

John G. Becker (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Mary E. Schaaf (Respondents)

Case Number: 02-06076

Hearing Site: Buffalo, New York

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant John G. Becker ("Becker") hereinafter referred to as "Claimant": Jeffrey A. Sellers, Esq., Silverberg, Yood, Sellers, McGorry & Silverberg, Buffalo, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Mary E. Schaaf ("Schaaf") hereinafter collectively referred to as "Respondents": Angela A. Turiano, Esq., previously Daren A. Luma, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: October 3, 2002.

Claimant signed the Uniform Submission Agreement: September 17, 2002.

Joint Statement of Answer filed by Respondents on or about: February 5, 2003.

MLPFS signed the Uniform Submission Agreement: February 5, 2003.

Schaaf signed the Uniform Submission Agreement: January 23, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: suitability; negligence; failure to supervise; breach of contract; breach of fiduciary duty; violations of federal and state securities laws; and violations of rules and regulations of NASD and various exchanges. Claimant's claim involved AIM International Equity Fund; Black Rock Small Capital Growth; Davis New York Venture Fund; Franklin Small Capital Growth Fund I; Goldman Sach's International; MFS Mass Investor Trust; MFS Emerging Growth Fund; Merrill Lynch Fundamental Growth Fund; and VanKampen American Value Fund.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$174,516.92, plus interest; counsel fees; costs and disbursements; and such further and different relief as the arbiters deem just, proper, and appropriate in the circumstances.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety; direct that the registration file of Respondent Mary Schaaf be expunged of any references to this claim; and that Claimant be ordered to pay all fees and costs in connection with this Arbitration, together with such other and further relief as is deemed just and proper.

### **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, and 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 dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Mary E. Schaaf's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Mary E. Schaaf must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Any and all relief not specifically addressed herein is 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
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**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 person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 @ \$450.00	= \$ 450.00
Pre-hearing conference: November 18, 2003 1 session	
One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: September 16, 2003 1 session	
Five (5) Hearing sessions @ \$1,125.00	= \$5,625.00
Hearing Dates: January 13, 2004 2 sessions	
January 14, 2004 2 sessions	
January 15, 2004 1 session	
Total Forum Fees	= \$7,200.00

The Panel has assessed all of the forum fees against Claimant.

**Fee Summary**

1. Claimant is solely liable for:	
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$7,200.00
Total Fees	= \$7,500.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$5,775.00
2. MLPFS is solely liable for:	
Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00


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

Christopher C. Willett, Esq. -	Public Arbitrator, Presiding Chair
Cheryl C. Nichols, Esq. -	Public Arbitrator
Anthony D. McCaffrey, CFP -	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

  
\_\_\_\_\_  
Christopher C. Willett, Esq.  
Public Arbitrator, Presiding Chairperson

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

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Cheryl C. Nichols, Esq.  
Public Arbitrator

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

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Anthony D. McCaffrey, CFP  
Non-Public Arbitrator

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

February 6, 2004  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Signature Date

  
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Cheryl C. Nichols, Esq.  
Public Arbitrator

2/9/04  
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Signature Date

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1-28-04  
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Signature Date

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February 6, 2004  
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