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

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In the Matter of the Arbitration Between:

Names of the Claimants

Thomas Taylor and Lois Taylor, husband and wife

Case Number: 03-00759

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.,  
a Delaware corporation

Hearing Site: Tampa, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Thomas Taylor and Lois Taylor, husband and wife, hereinafter collectively referred to as "Claimants":  
Brenda M. Combs, Esq. and William J. Schifino, Esq., Williams, Schifino, Mangione & Steady, P.A., Tampa,  
Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., a Delaware corporation, hereinafter referred to as  
"Respondent": Keith Olin, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 31, 2003.

Claimants signed the Uniform Submission Agreement: December 16, 2002.

Statement of Answer filed by Respondent on or about: May 9, 2003.

Respondent signed the Uniform Submission Agreement: May 5, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) violation of Florida Statutes, Chapter 517; 2) breach of fiduciary duty; and, 3) negligence/negligent supervision. The causes of action relate to the purchase and sale of various shares of stock in Claimants' accounts, including, but not limited to, EMC Corp., Gymboree and Cornerstone Internet Solutions.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$138,426.81, pre- and post award interest, punitive damages, arbitration fees, a finding that they are the prevailing party under Florida Statutes, Chapter 517.301 and are entitled to seek an award of attorney's fees and costs from a court of competent jurisdiction and

such other and further relief as this Panel deemed just and proper.

Respondent requested that the Statement of Claim be dismissed in its entirety and an award of such other and further relief as this Panel deemed just and proper.

**OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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:

Respondent is found liable for breach of fiduciary duty with respect to the Lois Taylor IRA account and shall pay to Claimant Lois Taylor compensatory damages in the amount of \$15,055.89, together with pre-and post-judgment interest to be computed at the Florida statutory rate from April 1, 1998 until the date of payment of the Award.

Respondent is liable and shall pay to Claimant Lois Taylor the sum of \$7,500.00 as costs for her expert witness.

Respondent is liable and shall pay to Claimant Lois Taylor the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

All claims asserted by Claimant Thomas Taylor pertaining to the Thomas Taylor IRA account and claims asserted pursuant to Claimants' joint account are denied.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages and Claimants' claims for relief pursuant to Florida Statutes, Chapter 517, are denied.

**FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 person at the time of the events giving rise to the dispute. Accordingly, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

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

### **Adjournment Fees**

No requests for adjournments were filed in this matter.

### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were assessed in this matter.

### **Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

### **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 the Panel @ \$1,125.00            | = \$1,125.00       |
| Pre-hearing conference:      October 14, 2003      1 session       |                    |
| Five (5) Hearing sessions with the Panel @ \$1,125.00              | = \$5,625.00       |
| Hearing Dates:              August 9, 2004              2 sessions |                    |
| August 10, 2004              2 sessions                            |                    |
| August 11, 2004              1 session                             |                    |
| <hr/> Total Forum Fees   | <hr/> = \$6,750.00 |

The Panel has assessed the total forum fees of \$6,750.00 to Respondent.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

|  |             |
|--|-------------|
| <u>Initial Filing Fee</u>                  | = \$ 300.00 |
| <u>Total Fees</u>                          | = \$ 300.00 |
| <u>Less payments</u>                       | = \$ 300.00 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 0.00   |

Respondent is solely liable for:

|  |                |
|--|----------------|
| <u>Member Fees</u>                         | = \$ 5,200.00  |
| <u>Forum Fees</u>                          | = \$ 6,750.00  |
| <u>Total Fees</u>                          | = \$ 11,950.00 |
| <u>Less payments</u>                       | = \$ 6,975.00  |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 4,975.00  |

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

**ARBITRATION PANEL**

|                                     |   |   |
|-------------------------------------|---|---|
| <i>Worth T. Blackwell, Esq.</i>     | - | <i>Non-Public Arbitrator, Presiding Chairperson</i> |
| <i>Patricia Gunn Zimmerman, CPA</i> | - | <i>Public Arbitrator</i>                            |
| <i>Bernard Y. Cockrell, II</i>      | - | <i>Public Arbitrator</i>                            |

**Concurring Arbitrators' Signatures**

/s/  
Worth T. Blackwell, Esq.  
Non-Public Arbitrator, Presiding Chairperson

08/16/04  
Signature Date

/s/  
Patricia Gunn Zimmerman, CPA  
Public Arbitrator

08/13/04  
Signature Date

/s/  
Bernard Y. Cockrell, II  
Public Arbitrator

08/16/04  
Signature Date

08/16/04  
Date of Service (For NASD Dispute Resolution office use only)

FROM :NASD

FAX NO. :5614474915

Aug. 13 2004 10:56AM P5

NASD Dispute Resolution  
Arbitration No. 03-00759  
Award Page 4

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Patricia Gunn Zimmerman, CPA

Bernard Y. Cockrell, II

- Non-Public Arbitrator, Presiding Chairperson

- Public Arbitrator

- Public Arbitrator

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Worth T. Blackwell, Esq.

Non-Public Arbitrator, Presiding Chairperson



Signature Date

Patricia Gunn Zimmerman, CPA

Public Arbitrator

Signature Date

Bernard Y. Cockrell, II

Public Arbitrator

Signature Date

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

FROM :NASD

FAX NO. :5614474915

Aug. 13 2004 10:53AM P5

NASD Dispute Resolution  
 Arbitration No. 03-00759  
Award Page 4

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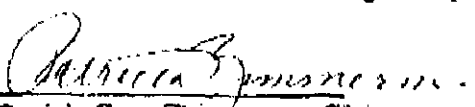
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8/13/04  
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Signature Date\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

FROM : NASD

FAX NO. : 5614474915

Aug. 13 2004 10:58AM PS

**NASD Dispute Resolution**

Arbitration No. 03-00759

Award Page 4**Fee Summary**

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