

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

CASE: 03-01438

Estate of Althea L. Adalian, Claimant vs. Merrill Lynch Pierce Fenner & Smith Inc, Donald Davis, and Mark Theriault Respondents.

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**ATTORNEYS:**

For Claimant, Estate of Althea L. Adalian, ("Claimant") appeared the personal representative, G. Adalian, Coronado, CA.

Respondents, Merrill Lynch Pierce Fenner & Smith Inc., Donald Davis, and Mark Theriault, (collectively "Respondents") appeared through their in-house counsel, James S. Gross, Esq., New York, NY.

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**DATE FILED:** February 27, 2003

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**CASE SUMMARY:** Claimant alleged that Respondents breached their fiduciary duty and recommended and placed the CMA account in high-risk unsuitable investments. Claimant maintained that due to Respondents' actions, the account suffered losses.

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**Claim Data**

Claim: \$16,124.00  
Interest: unspecified

Punitive: \$8,876.00  
Filing Fees: unspecified  
Other: unspecified

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**Award Data**

Award: \$14,374.00  
Interest: At the rate of 5% per annum  
from 8/21/02 to date of payment of the  
award.  
Punitive: \$.00  
Filing Fees: \$425.00  
Other: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Mark Theriault are jointly and severally liable and shall pay to the Claimant \$14,374.00. 2) Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Mark Theriault are jointly and severally liable and shall pay to the Claimant interest at the rate of 5% per annum from August 21, 2002 to date of payment of the award. 3) All requests for punitive damages are denied. 4) All other relief requests are denied. 5) The \$425.00 filing fee previously deposited with NASD Dispute Resolution by the Claimant, shall be retained by NASD Dispute Resolution. 6) Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Mark Theriault are jointly and severally liable and shall pay Claimant \$425.00 as reimbursement of the filing fee.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent, Merrill Lynch Pierce Fenner & Smith Inc. has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

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**OTHER ISSUES:** By agreement, Respondent Donald Davis, was dismissed from this arbitration prior to the arbitrator rendering a decision on the merits.

William S. Glickfield, Esq.

Sole Public Arbitrator

**AFFIRMATION**

I, William S. Glickfield, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

  
William S. Glickfield, Esq.

9-22-03  
Signature Date

October 2, 2003  
Date of Service (For NASD-DR office use only)