

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

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In the Matter of the Arbitration Between:

David DiRusso and David DiRusso c/f Gavin DiRusso (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kurt C. Jackson (Respondents)

Case Number: 03-01513

Hearing Site: Cleveland, Ohio

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

**REPRESENTATION OF PARTIES**

Claimants David DiRusso ("DiRusso") and David DiRusso c/f Gavin DiRusso ("DiRusso Custodian") hereinafter collectively referred to as "Claimants": George M. Moscarino, Esq., Moscarino & Treu, LLP, Cleveland, OH.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Kurt C. Jackson ("Jackson") hereinafter collectively referred to as "Respondents": Dennise S. Mulvihill, Esq., Bressler, Amery & Ross, P.C., Morristown, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: March 3, 2003.

Claimants signed the Uniform Submission Agreement: March 14, 2003.

Joint Statement of Answer filed by Respondents on or about: June 23, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: May 9, 2003.

Respondent Jackson signed the Uniform Submission Agreement: April 29, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence; breach of contract; breach of fiduciary duty; respondeat superior; failure to supervise; and suitability. The causes of action relate to various shares of common stock, mutual funds, and options.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$490,000.00 for DiRusso and compensatory damages in the amount of \$42,000.00 for DiRusso Custodian; interest from the date of the losses at Ohio's statutory rate of 10%; attorneys' fees; and costs.

Respondents requested that Claimants' Statement of Claim be dismissed; costs; and other relief as the Panel deems 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, 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. Respondents are jointly and severally liable and shall pay to the Claimants compensatory damages in the amount of \$48,430.00.
2. 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	= \$375.00
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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	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

#### **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 Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: October 17, 2003 1 session	

Eleven (11) Hearing sessions @ \$1,200.00 = \$13,200.00

Hearing Dates:            July 20, 2004            2 sessions  
                                 July 21, 2004            2 sessions  
                                 July 22, 2004            2 sessions  
                                 September 2, 2004       2 sessions  
                                 September 3, 2004       3 sessions

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Total Forum Fees = \$14,400.00

1. The Panel has assessed \$7,200.00 of the forum fees jointly and severally to the Claimants.
2. The Panel has assessed \$7,200.00 of the forum fees jointly and severally to the Respondents.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$7,200.00</u>
Total Fees	= \$7,575.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution	= \$6,000.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$7,000.00
Total Fees	= \$7,000.00
<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ .00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$7,200.00</u>
Total Fees	= \$7,200.00
<u>Less payments</u>	<u>= \$ 150.00</u>
Balance Due NASD Dispute Resolution	= \$7,050.00

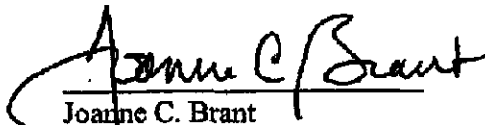
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Joanne C. Brant	-	Public Arbitrator, Presiding Chairperson
Edward F. Siegel, Esq.	-	Public Arbitrator
Earl Williams, Jr., Esq.	-	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 is which is my award.

  
\_\_\_\_\_  
Joanne C. Brant  
Public Arbitrator, Presiding Chairperson

Oct 15, 2004  
\_\_\_\_\_  
Signature Date

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Edward F. Siegel, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Earl Williams, Jr., Esq.  
Non-Public Arbitrator

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

October 21, 2004  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

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Edward F. Siegel, Esq.	-	Public Arbitrator
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Joanne C. Brant  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Edward F. Siegel, Esq.  
Public Arbitrator

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Signature Date

  
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Earl Williams, Jr., Esq.  
Non-Public Arbitrator

10/17/04  
\_\_\_\_\_  
Signature Date

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October 21, 2004  
Date of Service (For NASD Dispute Resolution use only)