

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

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In the Matter of the Arbitration Between:

Thomas Vazzano IRRA, Claimant v. Merrill Lynch Pierce Fenner & Smith, Inc. and  
UBS Financial Services, Inc., Respondents.

Case Number: 03-01737

Hearing Site: New York City, New York

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Nature of the Dispute: Customer vs. Member Firms.

**REPRESENTATION OF PARTIES**

Claimant, Thomas Vazzano IRRA, ("Vazzano"), hereinafter referred to as "Claimant":  
David W. Rubin, Esq., The Law Offices of David W. Rubin, Stamford, CT.

Respondents, hereinafter collectively referred to as "Respondents":  
Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"): Brett Sherman, Esq.,  
Merrill Lynch Pierce Fenner & Smith, Inc., New York, NY. Previously represented by  
Elyse N. Post, Merrill Lynch Pierce Fenner & Smith, Inc., New York, NY.  
UBS Financial Services, Inc. f/k/a UBS PaineWebber, Inc. ("UBS"): Tracey Salmon-  
Smith, Esq., UBS PaineWebber, Inc., New York, NY. Previously represented by Heather  
A. Wright, Corporate Vice President & Assistant General Counsel, UBS PaineWebber,  
Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: March 6, 2003.  
Claimant signed the Uniform Submission Agreement: February 10, 2003.

Statement of Answer filed by Respondent Merrill Lynch, on or about: May 16, 2003  
Respondent Merrill Lynch signed the Uniform Submission Agreement: May 16, 2003.

Statement of Answer filed by Respondent UBS, on or about: May 19, 2003.  
Respondent UBS signed the Uniform Submission Agreement: May 15, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; negligence;  
failure to execute transfer of all accounts from Merrill Lynch to UBS; and  
misrepresentation and omission of material facts. Claimant's claim involved mutual  
funds and common stock.

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

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

### **RELIEF REQUESTED**

Claimant requested payment from Merrill Lynch and/or UBS, to the extent each is liable in the amount of \$36,995.43, and attorney's fees.

Respondent Merrill Lynch requested that the Statement of Claim be dismissed in its entirety, and that the cost of this proceeding be assessed against the Claimant, and that Respondent be awarded such other and further relief as is deemed just and proper.

Respondent UBS requested the dismissal of this proceeding, and such other relief that is just and equitable.

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

Claimant amended its pleadings by requesting Recalculation/Adjustment of Damages at the hearings.

Respondent Merrill Lynch made a Motion for Directed Verdict at the close of Claimant's pleas. The Arbitrator denied this motion.

The Arbitrator dismissed with prejudice all claims against Respondent Merrill Lynch.

At the hearing on June 30, 2004, a Motion was made by Claimant's counsel, David Rubin and Respondent Merrill Lynch's counsel, Brett Sherman for attorneys' fees.

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 the evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent UBS is liable for and shall pay to the Claimant compensatory damages in the amount of \$34,624.31.
2. Respondent UBS is liable for and shall pay to Merrill Lynch, attorney's fees in the amount of the \$17,125.00. The arbitrator awarded attorney's fee in accordance with Rules 10214 and 10215 of the NASD Code of Arbitration Procedure.

3. Respondent UBS is liable for and shall pay to the Claimant, attorney's fees in the amount of \$12,665.00. The arbitrator awarded attorney's fees in accordance with Rules 10214 and 10215 of the NASD Code of Arbitration Procedure; and Reardon v. Prudential Sec., Inc. 2004 NASD Arb. Lexis 1114; George v. Sands Bros. & Co., 2004 NASD Arb. Lexis 225; Gargano v. Heyman, 203 Conn. 616,622(1987).
4. 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	= \$ 175.00
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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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch and UBS are parties.

Merrill Lynch:

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

UBS:

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

January 29-30, 2004, adjournment by Claimant	= \$ 450.00
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#### **Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: August 29, 2003 1 session	

April 1, 2004 1 session

Two (2) Hearing sessions with a single arbitrator @ \$450.00 = \$ 900.00

Hearing Dates: June 30, 2004 2 sessions

Total Forum Fees = \$1,800.00

1. The Arbitrator has assessed \$1,800.00 of the forum fees solely against Respondent UBS.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
Adjournment Fee	= \$ 450.00
Forum Fees	= \$ 0.00
Total Fees	= \$ 625.00
<u>Less payments</u>	= \$ 625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$2,625.00
Forum Fees	= \$ 0.00
Total Fees	= \$2,625.00
<u>Less payments</u>	= \$2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondents UBS is solely liable for:

Member Fees	= \$2,625.00
Forum Fees	= \$1,800.00
Total Fees	= \$4,425.00
<u>Less payments</u>	= \$2,625.00
Balance Due NASD Dispute Resolution	= \$1,800.00

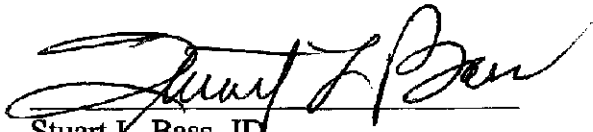
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
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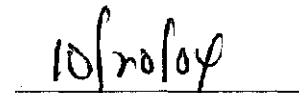
**ARBITRATOR**

Stuart L. Bass, JD - Sole Public Arbitrator

**Arbitrator's Signature**

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.

  
Stuart L. Bass, JD  
Sole Public Arbitrator

  
Signature Date

October 26, 2004

Date of Service (For NASD Dispute Resolution use only)