

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

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In the Matter of the Arbitration Between:

Andrew Rosenthal, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

Case Number: 03-02354

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

For Claimant:

John W. Davis, Esq.  
Law Offices of John W. Davis  
San Francisco, California

For Respondent:

John J. Murphy, III, Esq.  
Stradley Ronon Stevens & Young  
Cherry Hill, New Jersey

**CASE INFORMATION**

Statement of Claim filed: March 31, 2003

Claimant's Uniform Submission Agreement signed: March 27, 2003

Statement of Answer filed by Respondent: June 9, 2003

Respondent's Uniform Submission Agreement signed: June 6, 2003

**CASE SUMMARY**

Claimant alleged unsuitability, omissions, violations of NASD and NYSE rules and breach of fiduciary duty. Claimant's allegations involved unspecified securities.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$75,000.00, unspecified punitive damages, interest and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety, and costs.

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

On April 17, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On June 6, 2003, Respondent's counsel signed a Waiver Agreement on behalf of Respondent expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety for failure to sustain his burden of proof.
2. The parties shall bear their respective costs, including attorney's fees.
3. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 225.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 1,700.00
<b>Total Member Fees</b>	<b>= \$ 3,550.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: October 9, 2003 1 session	

One (1) Pre-hearing conference session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: July 31, 2003 1 session	

Five (5) Hearing sessions @ \$750.00/session	= \$ 3,750.00
Hearings: January 27, 2004 2 sessions	
January 28, 2004 2 sessions	
January 29, 2004 1 sessions	

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<b>Total Forum Fees</b>	<b>= \$ 4,950.00</b>
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By a two to one vote, the Panel assessed \$4,950.00 of the forum fees to Claimant, rather than split the forum fees between the parties.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 4,950.00
Total Fees	= \$ 5,175.00
Less payments	= \$( 975.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,200.00</b>

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
Less payments	= \$( 3,550.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

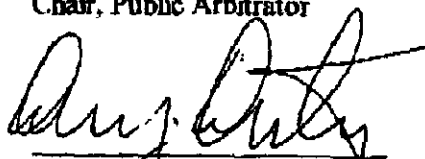
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Allan Blau, Esq.	-	Public Arbitrator, Presiding Chair
Dean J. Dietrich, Esq.	-	Public Arbitrator
Donald S. Duerson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Allan Blau, Esq.  
Chair, Public Arbitrator



\_\_\_\_\_  
Dean J. Dietrich, Esq.  
Public Arbitrator

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

2-7-04  
Signature Date

\_\_\_\_\_  
Donald S. Duerson  
Non-Public Arbitrator

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

2/9/04  
Date of Service

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Dean J. Dietrich, Esq.	-	Public Arbitrator
Donald S. Duerson	-	Non-Public Arbitrator

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Allan Blau, Esq.  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Dean J. Dietrich, Esq.  
Public Arbitrator

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

  
Donald S. Duerson  
Non-Public Arbitrator

2-6-04  
Signature Date

2/9/04  
Date of Service

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Dean J. Dietrich, Esq.	-	Public Arbitrator
Donald S. Duerson	-	Non-Public Arbitrator

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Allan Blau, Esq.  
Allan Blau, Esq.  
Chair, Public Arbitrator

1/9/04  
Signature Date

Dean J. Dietrich, Esq.  
Dean J. Dietrich, Esq.  
Public Arbitrator

Signature Date

Donald S. Duerson  
Donald S. Duerson  
Non-Public Arbitrator

Signature Date

02/11/04  
Date of Service