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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Dorothy C. Warekois

Case Number: 03-03007

Name of the Respondent  
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Tampa, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Dorothy C. Warekois, hereinafter referred to as "Claimant": E. P. Warekois, West Dennis, Massachusetts, appeared as her representative.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), hereinafter referred to as "Respondent": Neil S. Baritz, Esq., Baritz & Colman, LLP, Boca Raton, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: April 29, 2003.

Claimant signed the Uniform Submission Agreement: April 20, 2003.

Statement of Answer filed by Respondent on or about: July 2, 2003.

Respondent signed the Uniform Submission Agreement: May 19, 2003.

Motion to Exclude Respondent's Documents filed by Claimant on or about: April 6, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) misrepresentation; and, 3) failure to supervise. The causes of action relate to the purchase of Tyco International stock in Claimant's account.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$28,147.25, plus \$600.00 for NASD fees, \$500.00 for reproduction, mailing services and telephone fees and \$1900.00 for consultant fees.

Respondent requested that the Statement of Claim be dismissed in its entirety together with a determination that it is the prevailing party in this action and an award of costs.

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

On April 20, 2004, at the final hearing for this matter, Claimant restated her Motion to Exclude Respondent's Documents due to alleged untimely production. The Arbitrator denied this motion.

### **AWARD**

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

Respondent is found not liable and all Claimant's claims are denied.

Any and all claims for relief, not specifically addressed herein, 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	= \$ 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 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:

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

#### **Adjournment Fees**

No requests for adjournments were filed in this matter.

#### **Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

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

The Arbitrator 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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference:      October 7, 2003      1 session	

Two (2) Hearing sessions with the Arbitrator @ \$450.00	= \$ 900.00
<u>Hearing Dates: April 20, 2004 2 sessions</u>	
Total Forum Fees	= \$1,350.00

The Arbitrator has assessed the total forum fees of \$1,350.00 to Claimant.

**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**

Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 1,350.00
Total Fees	= \$ 1,525.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 925.00

Respondent is solely liable for:

Member Fees	= \$ 1,750.00
Total Fees	= \$ 1,750.00
<u>Less payments</u>	= \$ 1,750.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATOR**

*Fred L. Bryson, Jr., LLB*

*Public Arbitrator, Presiding Chairperson*

**Arbitrator's Signature**

/s/  
Fred L. Bryson, Jr., LLB  
Public Arbitrator, Presiding Chairperson

04/26/04  
Signature Date

04/26/04  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
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Public Arbitrator, Presiding Chairperson

Arbitrator's Signature

Fred L. Bryson, Jr., LLB  
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April 26<sup>th</sup> 2004  
Signature Date

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