

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

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In the Matter of the Arbitration Between:

Ursula Moyseowicz and George Moyseowicz JTWROS, Dr. George Moyseowicz IRA,  
and Dr. George E. Moyseowicz SEP (Claimants) v. Merrill Lynch, Pierce, Fenner &  
Smith, Inc. (Respondent)

Case Number: 03-03293

Hearing Site: Boston, Massachusetts

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Nature of the Dispute: Customers vs. Member.

**REPRESENTATION OF PARTIES**

Claimants Ursula Moyseowicz and George Moyseowicz JTWROS ("The Moyseowicz's"), Dr. George Moyseowicz IRA ("Moyseowicz IRA"), and Dr. George E. Moyseowicz SEP ("Moyseowicz SEP") hereinafter collectively referred to as "Claimants": John A. Sutherland, Esq., and Angela H. Magary, Esq., Brickley, Sears & Sorett, P.A., Boston, MA.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") hereinafter referred to as "Respondent": Brett Sherman, Esq. Merrill Lynch, Pierce, Fenner & Smith, Office of General Counsel, New York, NY. Previously represented by: Elyse N. Post, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., Office of General Counsel, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: May 5, 2003.

Each Claimant signed the Uniform Submission Agreement: January 22, 2003.

Statement of Answer filed by Respondent on or about: August 13, 2003.

Respondent signed the Uniform Submission Agreement: October 24, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; negligence; fraud; breach of contract; misrepresentations and omissions of material fact; failure to supervise; and suitability. Claimants' claim involved shares of Centennial Technologies, Solectron, Priceline.com, Rhythm Netconnections, E\*Trade, Gerald Stevens, JDS Uniphase, "Holdrs" depositary receipts, Ariba, Cisco, Microsoft, Epiphany, Nortel Networks, Sycamore Networks; Intel, and Worldcom.

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 \$188,000.00; lost opportunity damages; well-balanced portfolio damages; attorneys' fees and costs pursuant to the Massachusetts Securities Act, Mass. Gen. L. ("MGL") ch. 110A § 410, and the Massachusetts Consumer Protection Act, Mass. Gen. L. ch. 93A § 9; and punitive damages pursuant to *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995).

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

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

At the first hearing session, the Panel raised the lack of a Submission Agreement from the Respondent. Respondent's counsel of record then produced an executed Submission Agreement and the Panel provided a copy to NASD Dispute Resolution staff.

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

1. Respondent is liable for and shall pay to Claimants compensatory damages in the amount of \$17,749.71 plus interest at the rate of 6% per annum from July 31, 2002 until the date the award is paid.
2. Respondent is liable for and shall pay to Claimants attorneys' fees in the amount of \$38,750.00. The panel awarded attorneys' fees pursuant to MGL 110A, Section 410.
3. Respondent is liable for and shall pay to Claimants costs, with the exception of expert witness fees and costs, in the amount of \$3,073.72. The panel awarded costs pursuant to MGL 110A, Section 410.
4. Any and all relief not specifically addressed herein is denied.

### **FEEES**

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 = \$300.00

**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 = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

**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 @ \$1,125.00 = \$1,125.00

Pre-hearing conference: December 1, 2003 1 session

Six (6) Hearing sessions @ \$1,125.00 = \$6,750.00

Hearing Dates: March 24, 2004 2 sessions

March 25, 2004 2 sessions

May 12, 2004 2 sessions

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Total Forum Fees = \$7,875.00

1. The Panel has assessed \$1,968.75 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$5,906.25 of the forum fees against Respondent.

**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.

1. Respondent requested an LCD Projector at the May 12, 2004 hearing = \$645.00

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,968.75
Total Fees	= \$2,268.75
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 843.75

2. Respondent is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 5,906.25
<u>Administrative Costs</u>	<u>= \$ 645.00</u>
Total Fees	= \$11,751.25
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,551.25

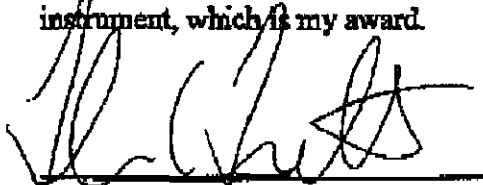
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
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**ARBITRATION PANEL**

Thomas C. Tretter, Esq.	-	Public Arbitrator, Presiding Chair
Phyllis N. Segal	-	Public Arbitrator
Thomas J. Horack	-	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, which is my award.



Thomas C. Tretter, Esq.  
Public Arbitrator, Presiding Chairperson

9/7/04  
Signature Date

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Phyllis N. Segal  
Public Arbitrator

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

\_\_\_\_\_  
Thomas J. Horack  
Non-Public Arbitrator

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

September 14, 2004

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Date of Service (For NASD Dispute Resolution use only)

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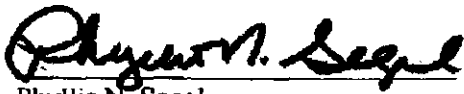
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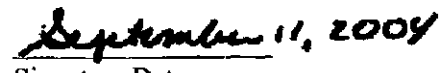
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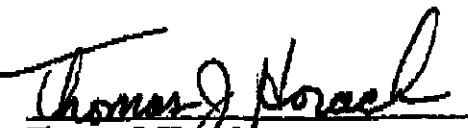
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