

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

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In the Matter of the Arbitration Between:

Joseph Grasso, individually and as Trustee of the Joseph Grasso Revocable Trust dated 3/8/99,  
Claimants vs. Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Eric Anderson Schimpf,  
Respondents

Case Number: 03-04054

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

Mitchell S. Ostwald, Esq.  
Law Offices of Mitchell S. Ostwald  
Sacramento, California

For Respondents:

Kenneth C. Mennemeier, Esq.  
Seth Hanson, Esq.  
Mennemeier, Glassman & Stroud, LLP  
Sacramento, California

**CASE INFORMATION**

Statement of Claim filed: June 3, 2003

Claimants' Uniform Submission Agreement signed: May 30, 2003

Joint Statement of Answer filed by Respondents: August 15, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated's Uniform Submission  
Agreement signed: August 22, 2003

Respondent Eric Anderson Schimpf's Uniform Submission Agreement signed: August 12, 2003

### **CASE SUMMARY**

Claimants alleged breach of fiduciary duty, fraud, failure to supervise, and violation of federal and state securities laws. Claimants' allegations involved various securities transaction including, but not limited to, stock purchases of AOL, ARBA CMGI, CSCO, EMC, EXDS, INTC, JDSU, and NTAP.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested not less than \$623,000.00 in compensatory damages, unspecified punitive damages, disgorgement, lost opportunity cost of what \$600,000.00 would have made, tax penalties, pre- and post-judgment interest and costs, including attorney's fees.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety, expungement of any references to this matter from the regulatory record of Respondent Eric Anderson Schimpf, and costs, including attorney's fees.

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

On June 20, 2003, Claimants and Claimants' 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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) Respondents are jointly and severally liable to and shall pay Claimants the sum of \$158,244.00 in compensatory damages.
- 2) Respondents are jointly and severally liable to and shall pay Claimants the sum of \$10,000.00 as reimbursement for costs.
- 3) Respondents are jointly and severally liable to and shall pay Claimants interest at the rate of 4% per annum on the sum of \$158,244.00 from February 29, 2000, until payment of this Award is made in full.
- 4) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 5) 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	= \$ 375.00
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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, Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$4,000.00
<b>Total Member Fees</b>	<b>= \$7,000.00</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 or the parties and the Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences:	
October 31, 2003	1 session
February 27, 2004	1 session

(10) Hearing sessions @ \$1,200/session	= \$12,000.00
Hearings:	
June 28, 2004	2 sessions
June 29, 2004	2 sessions
June 30, 2004	2 sessions
July 1, 2004	2 sessions
July 2, 2004	2 sessions

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<b>Total Forum Fees</b>	<b>= \$14,400.00</b>
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1. The Panel assessed \$7,200.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$7,200.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

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>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 6,000.00</b>

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
<u>Less payments</u>	<u>= \$(7,000.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Eric Anderson Schimpf are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	<u>= \$7,200.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$7,200.00</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**

James H. Schilt	-	Public Arbitrator, Presiding Chair
John P. Wilson	-	Public Arbitrator
Donald S. Duerson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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James H. Schilt  
Chair, Public Arbitrator

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Signature Date

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John P. Wilson  
Public Arbitrator

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Signature Date

**Dissenting Arbitrator's Signature**

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Donald S. Duerson  
Non-Public Arbitrator

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Signature Date

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Date of Service

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Chair, Public Arbitrator

  
Signature Date

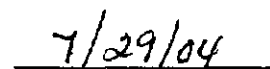
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John P. Wilson  
Public Arbitrator

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Signature Date

**Dissenting Arbitrator's Signature**

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Donald S. Duerson  
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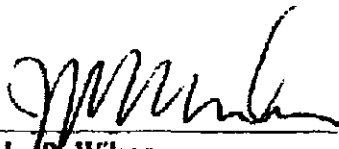
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Chair, Public Arbitrator

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Signature Date

  
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John P. Wilson  
Public Arbitrator

7/29/04  
\_\_\_\_\_  
Signature Date

**Dissenting Arbitrator's Signature**

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Donald S. Duerson  
Non-Public Arbitrator

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

7/29/04  
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Date of Service



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Chair, Public Arbitrator

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John P. Wilson  
Public Arbitrator

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Signature Date

**Dissenting Arbitrator's Signature**

  
Donald S. Duerson  
Non-Public Arbitrator

7-16-04  
Signature Date

7/29/04  
Date of Service