

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

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In the Matter of the Arbitration Between:

Ugo Bruni IRA (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Caroline N. Gundeck (Respondents)

Case Number: 03-04142

Hearing Site: New York, New York

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Nature of the Dispute: Customer v. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant Ugo Bruni IRA ("Bruni") hereinafter referred to as "Claimant": Loel H. Seitel, Esq., Englewood Cliffs, NJ. Previously represented by: Marc F. Desiderio, Esq. Law Offices of Marc F. Desiderio, Englewood Cliffs, NJ.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Caroline N. Gundeck ("Gundeck") hereinafter collectively referred to as "Respondents": Alan S. Rafterman, Esq., previously Jonathan Wehle, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 6, 2003.

Claimant signed the Uniform Submission Agreement: June 17, 2003.

Joint Statement of Answer filed by Respondents on or about: August 22, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: August 22, 2003.

Respondent Gundeck signed the Uniform Submission Agreement: September 3, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; breach of contract; and improper supervision and/or failure to supervise. Claimant's claim involved mutual funds.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$28,130.06, including lost

profits, commissions, account fees, plus pre-judgment interest at the legal rate, costs, attorneys' fees, and other case-related costs.

Respondents requested that Claimant's Statement of Claim be dismissed with prejudice in its entirety and that the Panel award Respondents costs and such other and further relief as they deem just and proper. Respondent Gundeck specifically requests that the Panel order that all references to this matter be stricken from her permanent registration records maintained by the Central Registration Depository.

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

On or about August 17, 2004, Respondents filed an Emergency Motion to Dismiss Claimant's Statement of Claim for Ignoring the Panel's Three Discovery Orders and NASD Code of Arbitration Procedure Requirements. On or about August 19, 2004 Claimant submitted a response.

Claimant filed a Request to have the Arbitrator recuse himself. The Arbitrator denied Claimant's Request.

By letter dated August 30, 2004, the Arbitrator provided the following Order:

"I have reviewed the Emergency Motion to Dismiss Claimant's Statement of Claim for Ignoring the Panel's Three Discovery Orders dated August 17, 2004 submitted by Respondents and all responses related thereto.

It is apparent that Claimant has ignored the Panel's orders dated May 24, 2004, July 5, 2004, and August 3, 2004. Therefore, after considering the pleadings and the motions presented, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed without prejudice. Upon payment of all fees, the Claimant may commence another arbitration in this forum.
2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Caroline N. Gundeck's Central Registration Depository ("CRD") record with the understanding that Respondent Gundeck must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Claimant is required to pay \$3,000.00 to Respondents for costs and attorneys' fees."

#### **AWARD**

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

1. Claimant's claims are dismissed without prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Caroline N. Gundeck's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Gundeck must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Claimant is liable and shall pay to Respondents \$3,000.00 for costs and attorneys' fees.
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	= \$150.00
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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, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$ 600.00
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 28, 2004, adjournment by Respondent	= Waived
July 12, 2004, adjournment by Respondent	= Waived

#### **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:

Two (2) Pre-hearing sessions with the sole Arbitrator @ \$450.00	= \$900.00
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Pre-hearing conferences:	October 27, 2003	1 session	
	December 2, 2003	1 session	
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Total Forum Fees			= \$900.00

1. The Arbitrator has assessed \$450.00 of the forum fees against Claimant.
2. The Arbitrator has assessed \$450.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$ 450.00
Total Fees	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00
2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$2,350.00
Total Fees	= \$2,350.00
<u>Less payments</u>	= \$2,350.00
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 450.00
Total Fees	= \$ 450.00
<u>Less payments</u>	= \$ 350.00
Balance Due NASD Dispute Resolution	= \$ 100.00

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


**ARBITRATOR**

Joel P. Mellis, Esq.

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 in which is my award.



Joel P. Mellis, Esq.  
Sole Public Arbitrator



Signature Date

September 7, 2004

Date of Service (For NASD Dispute Resolution use only)