

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

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In the Matter of the Arbitration Between:

James A. Lyons, Jr., James A. Lyons, Jr. IRA and Helen H. Lyons vs. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Phua K. Young

Case Number: 03-04172

Hearing Site: Philadelphia, PA

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

**REPRESENTATION OF PARTIES**

Claimants, James A. Lyons, Jr., James A. Lyons, Jr., IRA and Helen H. Lyons, hereinafter collectively referred to as "Claimants", were represented by Timothy J. Dennin, Esq., Timothy J. Dennin, P.C., Northport, New York.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") was represented by James S. Rollins, Esq. and Robert Baker, Esq., Bingham McCutchen, LLP, Boston, Massachusetts.

Respondent, Phua K. Young ("Young"), was represented by Kevin Clines, Esq., Hughes, Hubbard & Reed, LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on June 9, 2003.  
First Amended Statement of Claim filed on October 27, 2003.  
Claimants signed the Uniform Submission Agreement on May 27, 2003.

Statement of Answer filed by Respondent Merrill Lynch on September 2, 2003.  
A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on July 18, 2003.

Statement of Answer filed by Respondent Young on February 9, 2004.  
Respondent Young signed the Uniform Submission Agreement on January 30, 2004.

**CASE SUMMARY**

In their Statement of Claim and Amended Statement of Claim, Claimants asserted the following causes of action, among others: violation of the 1934 Securities Exchange Act and SEC Rule 10b-5, negligence, breach of contract, breach of fiduciary duty, and failure to supervise. The causes of action relate to the purchase of shares in Tyco International.

Unless specifically admitted in its Answer, Respondent Merrill Lynch denied the

allegations made in the Statement of Claim and asserted the following defenses, among others: Claimants fail to state a claim upon which relief can be granted; Claimants' claims are barred by the doctrines of waiver, ratification, acquiescence and estoppel; contributory negligence or comparative fault; assumption of the risk; failure to mitigate damages; Claimants authorized and approved all transactions in their accounts; and Claimants' claims are barred by the economic loss doctrine.

Unless specifically admitted in his Statement of Answer, Respondent Young denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimants fail to state a claim, assumption of the risk and failure to mitigate damages.

#### **RELIEF REQUESTED**

Claimants in their Statement of Claim requested:

Compensatory Damages	\$625,000.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent Merrill Lynch in its Statement of Answer requested that the Statement of Claim be dismissed with prejudice, and that the Arbitration Panel (the "Panel") award it fees and cost.

Respondent Young in his Statement of Answer requested that the Statement of Claim be dismissed in its entirety; that the Panel award him costs, expenses and attorneys' fees; and that all references to this arbitration be expunged from Respondent Young's record maintained by the NASD Central Registration Depository ("CRD").

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

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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has 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 to Claimants compensatory damages in the amount of \$240,000.00 plus punitive damages in the amount of \$240,000.00. Authority for the award of punitive damages derives from §14.2 of the Pennsylvania Suggested Standard Civil Jury Instructions

(2003) and Rule 10324 of the NASD Code of Arbitration Procedure.  
Respondents will also pay simple interest at the rate of 6% on that amount.  
Interest shall accrue from March 22, 2002 through the date the Award is paid in full;

2. Respondents are jointly and severally liable to and shall pay to Claimants expert witness costs in the amount of \$15,000.00;
3. All claims for attorneys' fees are denied in their entirety;
4. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
5. Any and all relief not specifically addressed herein is denied in its entirety.

### **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	= \$ 375.00
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

November 9-12, 2004 adjournment requested by Young	= \$ 1,200.00
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The Panel has assessed \$1,200.00 of the adjournment fees to Respondent Young.

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

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: January 13, 2004 1 session	
Twenty-four (24) Hearing sessions @ \$1,200.00	= \$28,800.00
November 7, 2005 2 sessions	
November 8, 2005 2 sessions	
November 9, 2005 2 sessions	
November 10, 2005 2 sessions	
November 11, 2005 2 sessions	
February 14, 2006 2 sessions	
February 15, 2006 2 sessions	
February 16, 2006 2 sessions	
March 9, 2006 2 sessions	
March 10, 2006 2 sessions	
June 21, 2006 2 sessions	
June 22, 2006 2 sessions	
<b>Total Forum Fees</b>	<b>= \$30,000.00</b>

1. The Panel has assessed \$20,000.00 of the forum fees to Respondent Merrill Lynch.
2. The Panel has assessed \$10,000.00 of the forum fees to Respondent Young.

**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.

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| 1. Claimants requested tape duplication                | = \$ 495.00 |
| 2. Respondent Merrill Lynch requested tape duplication | = \$ 270.00 |

**FEE SUMMARY**

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee	= \$ 375.00
<u>Administrative Costs</u>	= \$ 495.00
Total Fees	= \$ 870.00
<u>Less payments</u>	= \$ 2,130.00
Refund Due Claimants	= \$ 1,260.00

2. Respondent Merrill Lynch is assessed and shall pay the following fees:

Member Fees	= \$ 7,000.00
Forum Fees	= \$20,000.00
<u>Administrative Costs</u>	= \$ 270.00
Total Fees	= \$27,270.00

<u>Less payments</u>	= \$ 7,270.00
Balance Due NASD Dispute Resolution	= \$20,000.00

3. Respondent Young is assessed and shall pay the following fees:

Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	= \$10,000.00
Total Fees	= \$11,200.00
<u>Less payments</u>	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$11,200.00

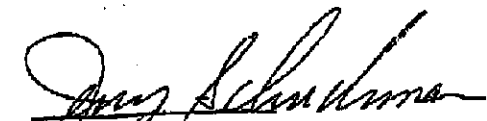
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Jerry Schuchman, Esq	-	Public Arbitrator, Presiding Chairperson
Richard F. Bieker, PhD	-	Public Arbitrator, Panelist
Joseph F. Pittelli, PhD	-	Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures

  
Jerry Schuchman, Esq  
Public Arbitrator, Presiding Chairperson

7-18-2006  
Signature Date

Richard F. Bieker, PhD  
Public Arbitrator, Panelist

Signature Date

Joseph F. Pittelli, PhD  
Non-Public Arbitrator, Panelist

Signature Date

7/19/06  
Date of Service (For NASD Dispute Resolution office use only)

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Richard F. Bieker, PhD  
Public Arbitrator, Panelist

7/18/06  
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