

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

CASE: 03-04481

Erna D. Grundman and Joanne M. Grundman JTWROS, Claimants v. Merrill Lynch Pierce Fenner & Smith, Inc. and Thomas L. Dwyer, Respondents.

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**ATTORNEYS:**

Claimants, Erna D. Grundman and Joanne M. Grundman JTWROS, ("Claimants"), appeared pro se, Carson City, NV.

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Thomas L. Dwyer, ("Respondents"), appeared through their in-house counsel John P. Bevilacqua, New York, NY.

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**NATURE OF DISPUTE:** Customers v. Member and Associated Person

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**DATE FILED:** June 19, 2003

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**CASE SUMMARY:** Claimants alleged that Respondents recommended and then failed to execute an order to sell unsuitable large cap growth fund MFS Growth & Income (MIGBX) securities. Claimants additionally alleged that Respondents were negligent and breached their fiduciary duty, and that Respondent Merrill Lynch Pierce Fenner and Smith, Inc. failed to properly supervise their representative, Respondent Thomas L. Dwyer. Claimants maintained that due to Respondents' action, their joint account suffered financial losses.

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**Claim Data**

Claim: \$25,000.00  
Interest: \$9,688.00  
Attorney Fees: \$5,225.00  
Filing Fees: \$770.10  
Other: Unspecified

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**Award Data**

Award: \$18,466.00  
Interest: \$.00  
Attorney Fees: \$.00  
Filing Fees: \$425.00  
Other: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondents are jointly and severally liable and shall pay to the Claimants \$18,466.00. 2) All requests for interest are denied. 3) All requests for attorney fees are denied. 4) All other relief requests are denied. 5) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimants deposited previously. 6) Respondents are jointly and severally liable and shall pay to the Claimants \$425.00 as reimbursement of the filing fee.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent Merrill Lynch Pierce Fenner & Smith, Inc. has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

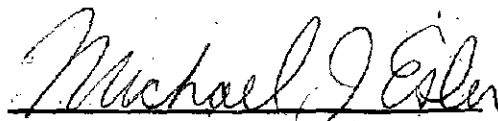
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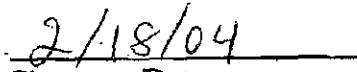
Michael J. Esler, Esq.

Sole Public Arbitrator

**AFFIRMATION**

I, Michael J. Esler, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

  
Michael J. Esler, Esq.

  
Signature Date

March 5, 2004  
Date of Service (For NASD-DR office use only)