

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

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In the Matter of the Arbitration Between:

Irwin E. Cohen, Irwin E. Cohen IRA, Sanford Cohen, and C. B. Consulting Services, Inc.  
(Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. (Respondent)

Case Number: 03-04661

Hearing Site: New York, New York

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Nature of the Dispute: Customers vs. Member.

**REPRESENTATION OF PARTIES**

Claimants Irwin E. Cohen ("I. Cohen"), Irwin E. Cohen IRA ("I. Cohen IRA"), Sanford Cohen ("S. Cohen"), and C. B. Consulting Services, Inc. ("C.B.") hereinafter collectively referred to as "Claimants": John E. Sutherland, Esq., Brickley, Sears & Sorett, P.A., Boston, MA.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") hereinafter referred to as "Respondent": Christopher Freeze, Esq., Krebsbach & Snyder, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 24, 2003.

Claimants signed the Uniform Submission Agreement: May 22, 2003.

Statement of Answer filed by Respondent on or about: September 17, 2003.

Respondent signed the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: suitability; misrepresentation; omission of facts; unauthorized trading; and failure to supervise. The causes of action relate to various common stocks and mutual funds.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$355,000.00; attorneys' fees; interest; and punitive damages pursuant to *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514

U.S. 52 (1995).

Respondent requested that Claimants' Statement of Claim be dismissed in all respects and that disbursements and costs be assessed against Claimants.

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

1. The claims of Claimants are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$300.00
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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	= \$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 23, 2003 1 session	
Eight (8) Hearing sessions @ \$1,125.00	= \$ 9,000.00
Hearing Dates: January 4, 2005 2 sessions	

January 5, 2005	2 sessions
January 6, 2005	2 sessions
January 7, 2005	2 sessions

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Total Forum Fees	= \$10,125.00
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1. The Panel has assessed \$5,062.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$5,062.50 of the forum fees against Respondent.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 5,062.50
Total Fees	= \$ 5,362.50
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 3,937.50

2. Respondent is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 5,062.50
Total Fees	= \$10,262.50
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,062.50


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

**ARBITRATION PANEL**

Christine Moore, Esq.	-	Public Arbitrator, Presiding Chairperson
Victor K. Tyras	-	Public Arbitrator
Bernard J. McGuire	-	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.

  
\_\_\_\_\_  
Christine Moore, Esq.  
Public Arbitrator, Presiding Chairperson

1/19/05  
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Signature Date

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Victor K. Tyras  
Public Arbitrator

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

\_\_\_\_\_  
Bernard J. McGuire  
Non-Public Arbitrator

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

January 19, 2005  
Date of Service (For NASD Dispute Resolution use only)

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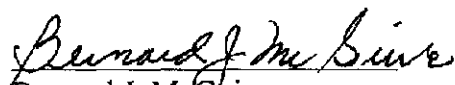
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