

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

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In the Matter of the Arbitration Between:

Thomas G. Meyers (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. (Respondent)

Case Number: 03-06222

Hearing Site: Buffalo, New York

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Claimant Thomas G. Meyers ("Meyers") hereinafter referred to as "Claimant": Michael J. Stanton, Esq., James, Hoyer, Newcomer & Smiljanich, P.A., Tampa, FL.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") hereinafter referred to as "Respondent": Dimitri Nemirovsky, Esq., Bingham McCutchen, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: August 26, 2003.

Claimant signed the Uniform Submission Agreement: August 20, 2003.

Statement of Answer filed by Respondent on or about: December 3, 2003.

Respondent signed the Uniform Submission Agreement: November 4, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence and gross negligence; breach of fiduciary duty; and fraudulent inducement. The causes of action relate to shares of common stock, including but not limited to Aether Systems.

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

**RELIEF REQUESTED**

Claimant requested damages in the amount of \$500,000.00 inclusive of compensatory and punitive damages; interest; costs; attorneys' fees; witness and production fees; and other case-related costs.

Respondent requested that the Panel dismiss the Statement of Claim in its entirety; and such other, further, and different relief as the Panel may deem appropriate.

### **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. Respondent Merrill Lynch is liable for and shall pay to Claimant compensatory damages in the amount of \$15,000.00.
2. Any and all relief not specifically addressed herein, including punitive damages and attorneys' fees, 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

#### **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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: September 21, 2004 1 session	
One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: May 25, 2004 1 session	

Four (4) Hearing sessions @ \$1,125.00 = \$ 4,500.00

Hearing Dates: November 15, 2004 2 sessions

November 16, 2004 2 sessions

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Total Forum Fees = \$6,075.00

1. The Panel has assessed \$3,037.50 of the forum fees against Claimant.
2. The Panel has assessed \$3,037.50 of the forum fees against Respondent.

#### Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$3,037.50

Total Fees = \$3,337.50

Less payments = \$1,425.00

Balance Due NASD Dispute Resolution = \$1,912.50

2. Respondent is solely liable for:

Member Fees = \$5,200.00

Forum Fees = \$3,037.50

Total Fees = \$8,237.50

Less payments = \$5,200.00

Balance Due NASD Dispute Resolution = \$3,037.50.

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

**ARBITRATION PANEL**

Christopher C. Willett, Esq.	-	Public Arbitrator, Presiding Chairperson
James C. Galloway	-	Public Arbitrator
Gust D. Servis	-	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.



Christopher C. Willett, Esq.  
Public Arbitrator, Presiding Chairperson

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

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James C. Galloway  
Public Arbitrator

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

\_\_\_\_\_  
Gust D. Servis  
Non-Public Arbitrator

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Signature Date

December 2, 2004  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Christopher C. Willett, Esq.	-	Public Arbitrator, Presiding Chairperson
James C. Galloway	-	Public Arbitrator
Gust D. Servis	-	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.

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Christopher C. Willett, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
James C. Galloway  
Public Arbitrator

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

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Gust D. Servis  
Non-Public Arbitrator

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Signature Date

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ATTN. JISOK LEE

**ARBITRATION PANEL**

Christopher C. Willett, Esq.	-	Public Arbitrator, Presiding Chairperson
James C. Galloway	-	Public Arbitrator
Gust D. Servis	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

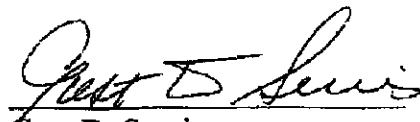
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Public Arbitrator, Presiding Chairperson

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Signature Date

\_\_\_\_\_  
James C. Galloway  
Public Arbitrator

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

  
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Gust D. Servis  
Non-Public Arbitrator

12-22-04  
\_\_\_\_\_  
Signature Date

December 2, 2004  
Date of Service (For NASD Dispute Resolution use only)