

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

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In the Matter of the Arbitration Between:

Lorraine M. Dorsey Trust U/A dtd 1/22/88 and Grace M. Wallace, Claimants v. Merrill Lynch,  
Pierce, Fenner, & Smith, Inc., Respondent

Case Number: 03-06283

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customers v. Member

**REPRESENTATION OF PARTIES**

For Claimants:

Ryan K. Bakhtiari, Esq.  
Orousha Brocious, Esq.  
Aidikoff & Uhl  
Beverly Hills, California

For Respondent:

Peter Brown Dolan, Esq.  
The Dolan Law Offices  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: August 27, 2003

Claimant the Lorraine M. Dorsey Trust U/A dtd 01/22/88's Uniform Submission Agreement  
signed: August 23, 2003

Claimant Grace M. Wallace's Uniform Submission Agreement signed: August 23, 2003

Statement of Answer filed: October 24, 2003

Amendment to Statement of Answer filed: October 27, 2003

### **CASE SUMMARY**

Claimants alleged breach of fiduciary duty, unsuitability, constructive fraud, elder abuse, violations of state and federal securities laws, violation of NASD and NYSE Rules, and failure to supervise.

Claimant the Lorraine M. Dorsey Trust's allegations involved the purchase of "non-dividend paying equities primarily in technology," including but not limited to Infospace.com, Nortel, Oracle, JDS Uniphase, G02Net, Qualcomm, Cypress Semiconductors, Netscape, Ericsson, and Class B mutual fund shares in Munder NetNet Fund.

Claimant Grace M. Wallace's allegations involved the purchase on margin of allegedly "unsuitable securities in unreasonable concentrations in technology, telecommunications, and internet stocks," including, but not limited to, B2B Internet Holder, Infospace.com, JDS Uniphase, Nortel, Qualcomm, Broadband Holders Dep., Dell, Netro, EMC, and Cypress Semiconductors.

Respondent's Statement of Answer denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

On October 27, 2003, Respondent filed an Amendment to its Statement of Answer pursuant to the NASD Code of Arbitration Procedure Rule 10328(a). In the Amendment, Respondent asserted various affirmative defenses to Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested \$192,618.31 in compensatory damages, reimbursement of all profits Respondent generated from the accounts, lost opportunity cost of what the accounts would have earned if invested properly from the date of Respondent's wrongful conduct to the date of any arbitration award, unspecified punitive damages, treble damages in accordance with the California Civil Code §3345, interest in accordance with California Civil Code §3287(a), and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety and that all arbitration fees imposed by the NASD be assessed against Claimants.

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

Respondent Merrill Lynch, Pierce, Fenner, & Smith, Inc. did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is

bound by the determination of the Panel on all issues submitted.

On August 23, 2003, Lorraine M. Dorsey, as Trustee of the Lorraine M. Dorsey Trust U/A dtd 01/22/88, and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On September 25, 2003, Claimant Grace M. Wallace and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waivers of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On March 17, 2003, Respondent made a Motion to Sever. After due deliberation, the Panel denied the motion.

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

- 1) Claimant Lorraine M. Dorsey Trust U/A dtd 1/22/88's claims are denied in their entirety.
- 2) Respondent is liable to and shall pay Claimant Grace M. Wallace the sum of \$150,000.00 in compensatory damages.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 375.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner, & Smith, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Three (3) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$ 1,350.00

Pre-hearing conferences:	July 19, 2004	1 session
	September 27, 2004	1 session
	November 03, 2004	1 session

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200.00

Pre-hearing conference:	March 17, 2004	1 session
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Seven (7) Hearing sessions @ \$1,200.00/session = \$ 8,400.00

Hearings:	January 31, 2005	2 sessions
	February 1, 2005	2 sessions
	February 2, 2005	2 sessions
	February 3, 2005	1 sessions

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<b>Total Forum Fees</b>	<b>= \$10,950.00</b>
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The Panel assessed the entire balance of the forum fees, in the amount of \$10,950.00 to Respondent Merrill Lynch, Pierce, Fenner, & Smith, Inc.

**Fee Summary**

1. Claimants are jointly and severally charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Less payments	= \$ (1,425.00)
<b>Refund Due from NASD Dispute Resolution</b>	<b>= \$ (1,050.00)</b>

2. Respondent Merrill Lynch, Pierce, Fenner, & Smith, Inc. is charged with the following fees and costs:

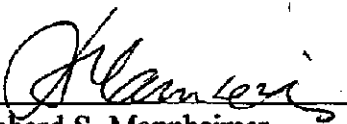
Member Fees	= \$ 7,000.00
Forum Fees	= \$10,950.00
Total Fees	= \$17,950.00
Less payments	= \$(5,250.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$12,700.00</b>

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

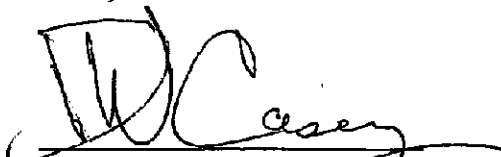
**ARBITRATION PANEL**

<b>Richard S. Mannheimer</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>David W. Casey, Esq.</b>	-	<b>Public Arbitrator</b>
<b>Stephen F. Kempa</b>	-	<b>Non-Public Arbitrator</b>


**Concurring Arbitrators' Signatures**

  
Richard S. Mannheimer  
Chair, Public Arbitrator

2/3/05  
Signature Date

  
David W. Casey, Esq.  
Public Arbitrator

2/3/05  
Signature Date

  
Stephen F. Kempa  
Non-Public Arbitrator

Feb 3<sup>rd</sup> 2005  
Signature Date

February 3, 2005  
Date of Service