

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

---

In the Matter of the Arbitration Between:

Ralph Ventra, Ralph Ventra IRA, Ralph Ventra Roth IRA, Ralph Ventra Trustee U/A DTD 2/24/98, and Ventra Operating Corp. D/B/A Van Gogh Movers (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and James F. Bernard (Respondents)

Case Number: 03-09088

Hearing Site: New York, New York

---

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

**REPRESENTATION OF PARTIES**

Claimants Ralph Ventra ("R. Ventra"), Ralph Ventra IRA ("R. Ventra IRA"), Ralph Ventra Roth IRA ("R. Ventra Roth IRA"), Ralph Ventra Trustee U/A DTD 2/24/98 ("R. Ventra Trust"), and Ventra Operating Corp. D/B/A Van Gogh Movers ("Ventra Operating") hereinafter collectively referred to as "Claimants": John T. McGuire, Esq., John T McGuire and Associates, P.C., New York, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and James F. Bernard ("Bernard") hereinafter collectively referred to as "Respondents": David J. Libowsky, Esq., Bressler, Amery & Ross, P.C., New York, NY.

**CASE INFORMATION**

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

Claimants signed the Uniform Submission Agreements: October 31, 2003 and January 12, 2004.

Joint Statement of Answer filed by Respondents on or about: June 4, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: May 7, 2004.

Respondent Bernard signed the Uniform Submission Agreement: April 6, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: fraud; securities fraud; breach of duty; negligence; breach of contract; and failure to supervise. The causes of action relate to common stocks, bonds, and mutual funds

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$250,000.00; consequential damages; interest; punitive damages; attorneys' fees; costs; and any other damages the Panel may deem just and fair.

Respondents requested that the Claimants' Statement of Claim be dismissed with prejudice in its entirety and that this matter be expunged from the CRD records of Respondent Bernard.

### **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 Bernard is liable for and shall pay to Claimant R. Ventra compensatory damages in the amount of \$1,305.00.
2. Respondent Merrill Lynch is liable for and shall pay to Claimant R. Ventra compensatory damages in the amount of \$129,195.00.
3. 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
--------------------------	------------

#### **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(s): November 5, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference(s): September 7, 2004 1 session

Six (6) Hearing sessions @ \$1,125.00 = \$6,750.00

Hearing Dates: January 18, 2005 2 sessions  
January 19, 2005 2 sessions  
January 20, 2005 2 sessions

---

Total Forum Fees = \$8,325.00

1. The Panel has assessed \$8,325.00 of the forum fees against Respondent Merrill Lynch.

**Fee Summary**

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 1,800.00
<u>Refund Due Claimants</u>	= \$ 1,500.00

2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 8,325.00
<u>Total Fees</u>	= \$13,525.00
<u>Less payments</u>	= \$ 5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 8,325.00

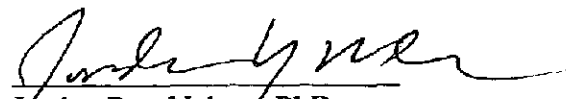
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Jordan Roy Nelson, PhD	-	Public Arbitrator, Presiding Chairperson
Howard L. Sobel	-	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.

  
\_\_\_\_\_  
Jordan Roy Nelson, PhD  
Public Arbitrator, Presiding Chairperson

1/28/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Howard L. Sobel  
Public Arbitrator

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

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

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

February 8, 2005  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**


Jordan Roy Nelson, PhD	-	Public Arbitrator, Presiding Chairperson
Howard L. Sobel	-	Public Arbitrator
Bernard J. McGuire	-	Non-Public Arbitrator

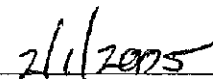
**Concurring Arbitrators' Signatures**

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.

\_\_\_\_\_  
Jordan Roy Nelson, PhD  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Howard L. Sobel  
Public Arbitrator

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

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

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

\_\_\_\_\_  
February 8, 2005  
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Jordan Roy Nelson, PhD	-	Public Arbitrator, Presiding Chairperson
Howard L. Sobel	-	Public Arbitrator
Bernard J. McGuire	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

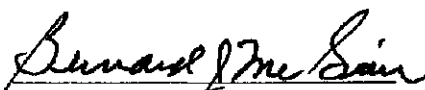
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Jordan Roy Nelson, PhD  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Howard L. Sobel  
Public Arbitrator

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

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

1/29/05  
\_\_\_\_\_  
Signature Date

February 8, 2005

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)