

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Eugene W. Ennis

Case Number: 03-09131

Names of the Respondents  
Christopher T. Wright  
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Philadelphia, PA

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

**REPRESENTATION OF PARTIES**

Claimant, Eugene W. Ennis, hereinafter referred to as "Claimant", was represented by Edwin L. Stock, Esq., Roland & Schlegel, Reading, Pennsylvania.

Respondents, Christopher T. Wright ("Wright") and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), hereinafter collectively referred to as "Respondents", were represented by Jacqueline M. Gorham, Esq., Kresbach & Snyder, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on December 26, 2003.

Claimant signed the Uniform Submission Agreement on December 19, 2003.

Statement of Answer filed by Respondents on March 2, 2004.

Respondent Wright signed the Uniform Submission Agreement on February 24, 2004.

A representative of Respondent Merrill Lynch signed the Uniform Submission Agreement on January 13, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: unauthorized distributions; unsuitability; breach of fiduciary duty; negligence; violation of NASD regulations; and *respondeat superior*. The causes of action relate to the purchase and sale of stocks and bonds within an annuity.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses among others: statute of limitations; failure to state a claim upon which relief may be granted; estoppel, waiver, and laches; ratification; and, failure to mitigate.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$49,104.34, and interest, costs, and attorneys' fees in unspecified amounts.

Respondents requested that the Statement of Claim be dismissed in all respects, that all reference to this arbitration be expunged from the Central Registration Depository records relating to Respondent Wright, and that disbursements and costs be assessed against Claimant.

### **AWARD**

After considering the pleadings, 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. Claimant's claims are denied in their entirety;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
3. Any and all relief not specifically addressed herein is denied in its entirety.

### **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	= \$ 175.00
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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 is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

January 27-28, 2005, requested by Claimant	= \$ 600.00
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**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

January 27-28, 2005, assessment to Claimant	= \$ 150.00
January 27-28, 2005, assessment to Respondents, jointly and severally	= \$ 150.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$600.00	= \$ 600.00
Pre-hearing conference: August 3, 2004 1 session	

Two (2) Hearing sessions @ \$600.00	= \$1,200.00
Hearing Date: August 2, 2005 2 sessions	

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Total Forum Fees	= \$1,800.00
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1. The Panel has assessed \$900.00 of the forum fees to Claimant.
2. The Panel has assessed \$900.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 175.00
Adjournment Fee	= \$ 600.00
3-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 900.00
Total Fees	= \$1,825.00
Less payments	= \$ 775.00
Balance Due NASD Dispute Resolution	= \$1,050.00

2. Respondents are jointly and severally liable for:

3-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 900.00
Total Fees	= \$1,050.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 750.00

3. Respondent Merrill Lynch is solely liable for:

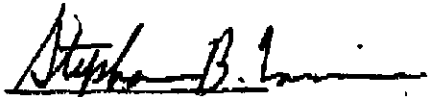
Member Fees	= \$2,625.00
Total Fees	= \$2,650.00
Less payments	= \$2,650.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Stephen B. Narin, Esq.	- Public Arbitrator, Presiding Chairperson
Edward Blumstein, Esq.	- Public Arbitrator, Panelist
Gordon E. Wright	- Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**



Stephen B. Narin, Esq.  
Public Arbitrator, Presiding Chairperson



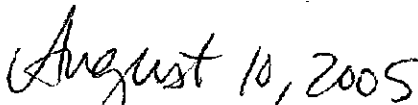
Signature Date

Edward Blumstein, Esq.  
Public Arbitrator, Panelist

Signature Date

Gordon E. Wright  
Non-Public Arbitrator, Panelist

Signature Date



Date of Service (For NASD Dispute Resolution office use only)

3. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$2,625.00
Total Fees	= \$2,650.00
Less payments	= \$2,650.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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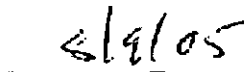
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Stephen B. Narin, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date



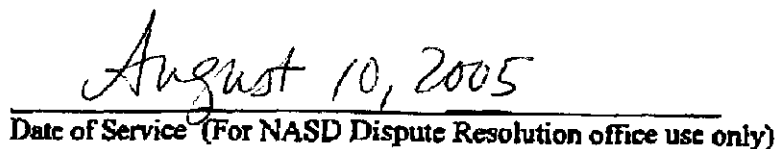
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Edward Blumstein, Esq.  
Public Arbitrator, Panelist

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Signature Date

Gordon E. Wright  
Gordon E. Wright  
Non-Public Arbitrator, Panelist

August 10, 2005  
Signature Date

August 10, 2005  
Date of Service (For NASD Dispute Resolution office use only)