

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

CASE: 04-00029

Wayne Diller, Claimant v. Merrill Lynch Pierce Fenner & Smith, Inc., Respondent.

**ATTORNEYS:**

For Claimant, Wayne Diller, ("Claimant"), appeared Wm. Jemison Mims, Jr., Esq., of the firm Levin, Papantonio, Thomas, Mitchell, Echsner, & Proctor, P.A., Pensacola, FL.

For Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., ("Respondent"), appeared Edward "Ted" A. Hosp, Esq., of the firm Maynard, Cooper & Gale, P.C., Montgomery, AL.

**NATURE OF DISPUTE:** Customer v. Member

**DATE FILED:** January 2, 2004

**CASE SUMMARY:** Claimant alleged that Respondent breached its fiduciary duty, negligently, intentionally, and/or recklessly misrepresented and/or omitted material facts that were necessary to make informed investment decisions in the Claimant's portfolio, and violated Blue Sky Laws. Claimant's claim involved Inktomi Corp., AOL TimeWarner, and ML Focus Twenty stock. Claimant maintained that due to Respondent's actions, his account suffered financial losses.

**Claim Data**

Claim: \$20,397.86  
Punitive: Unspecified  
Interest: Unspecified  
Attorney Fees: Unspecified  
Filing Fees: Unspecified  
Other: Unspecified

**Award Data**

Award: \$7,000.00  
Punitive: \$0.00  
Interest: \$0.00  
Attorney Fees: \$1,500.00  
Filing Fees: \$340.00  
Other: \$0.00

**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent is liable and shall pay to the Claimant \$7,000.00. 2) Respondent is liable and shall pay to the Claimant \$1,500.00 in attorney fees. The undersigned arbitrator awarded attorney fees based on the percent liability assessed from the arguments put forth in the Statement of Claim. 3) All requests for punitive damages are denied. 4) All requests for interest are denied. 5) All other relief requests are denied. 6) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously. 7) Respondent is liable and shall pay to the Claimant \$340.00 as reimbursement of eighty percent (80%) of the filing fees.

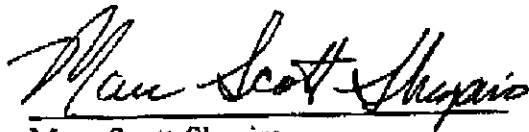
**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

**ARBITRATOR**

Marc Scott Shapiro - Sole Public Arbitrator

**AFFIRMATION**

I, Marc Scott Shapiro, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

  
\_\_\_\_\_  
Marc Scott Shapiro

6-29-04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
July 14, 2004  
Date of Service (For NASD-DR office use only)