

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 04-00170

The Marilyn Eisenberg Revocable Trust, Benjamin P. Eisenberg and Marilyn Eisenberg, Trustees, Claimant vs. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

ATTORNEYS:

For Claimant, The Marilyn Eisenberg Revocable Trust, Benjamin P. Eisenberg and Marilyn Eisenberg, Trustees ("Claimant"), appeared Jeffrey B. Kaplan, Esq., Dimond Kaplan & Rothstein, P.A., Miami, FL.

For Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent"), appeared Bradley B. Rounsaville, Esq., of the firm Maynard, Cooper & Gale, P.C., Birmingham, AL.

NATURE OF DISPUTE: Customer v. Member and Associated Person.

DATE FILED: January 12, 2004.

CASE SUMMARY: Claimant alleged that Respondent breached its fiduciary duty, was negligent, committed common law fraud, fraudulent misrepresentation, and fraudulent inducement associated with the recommendation and sale of its proprietary mutual fund, the Merrill Lynch Focus 20 Fund.

Claim Data

Claim: \$10,639.32, plus rescission of the sale of the fund to Claimants, plus restitution and/or disgorgement of monies earned by Respondent
Interest: Unspecified
Filing Fees: Unspecified
Other: Unspecified

Award Data

Award: \$10,639.32
Interest: \$.00
Filing Fees: \$425.00
Other: \$.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 \$10,639.32. 2) All requests for interest are denied. 3) All other relief requests are denied. 4) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously. 6) Respondent is liable and shall pay Claimant \$425.00 as reimbursement of the filing fee.

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

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Jerrold P. Katz

Sole Public Arbitrator

AFFIRMATION

I, Jerrold P. Katz, 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.


Jerrold P. Katz

8/31/07
Signature Date

September 2, 2004

Date of Service (For NASD-DR office use only)