

NASD DISPUTE RESOLUTION AWARD

NASD DISPUTE RESOLUTION

CASE: 04-00263

Howard & Elizabeth Fribush JNT, Claimant v. Merrill Lynch Pierce Fenner & Smith, Inc., Respondent.

ATTORNEYS:

For Claimant, Howard & Elizabeth Fribush JNT, ("Claimant"), appeared Jeffrey B. Kaplan, Esq., of the firm Dimond Kaplan & Rothstein, P.A., Miami, FL.

For Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., ("Respondent"), appeared Lawrence D. Ross, Esq., of the firm Bressler Amery & Ross, P.C., Morristown, NJ.

NATURE OF DISPUTE: Customer v. Member

DATE FILED: January 15, 2004

CASE SUMMARY: Claimant alleged that Respondent breached its fiduciary duty, committed common law fraud, fraudulent misrepresentation, omission, and inducement, negligence, negligent misrepresentation, and gross negligence. Claimant's claim involved Focus 20 Fund stock. Claimant maintained that due to Respondent's actions the joint account suffered financial losses.

Claim Data

Claim: \$9,349.49, plus rescission of sale of Focus 20 Fund & restitution and/or disgorgement of monies earned by Respondent from such transactions
Interest: Prejudgment at statutory rate
Filing Fees: Unspecified
Other: Unspecified

Award Data

Award: \$.00

Interest: \$.00
Filing Fees: \$162.50
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of the Claimant are dismissed in their entirety. 2) All requests for interest are denied. 3) All other relief requests are denied. 4) NASD Dispute Resolution shall retain the \$325.00 filing fee that the Claimant deposited previously. 5) Respondent is liable and shall pay to the Claimant \$162.50 as reimbursement of one-half of the filing fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Dispute Resolution the \$325.00 Member Surcharge previously invoiced.

Page Two
Award 04-00263

ARBITRATOR

James P. O'Donnell - Sole Public Arbitrator

AFFIRMATION

I, James P. O'Donnell, 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.


James P. O'Donnell


Signature Date

August 11, 2004
Date of Service (For NASD-DR office use only)