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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Century Industries, Inc.

Case Number: 04-00643

Name of the Respondent  
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Little Rock, Arkansas

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Century Industries, Inc., hereinafter referred to as "Claimant": Michael G. Smith, Esq., Dover Dixon Home, PLLC, Little Rock, Arkansas.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Carl Burkhalter, Esq., Maynard Cooper & Gale, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: January 30, 2004.

Claimant signed the Uniform Submission Agreement: January 30, 2004.

Statement of Answer filed by Respondent on or about: June 15, 2004.

Respondent signed the Uniform Submission Agreement: April 1, 2004.

First Amended Statement of Claim filed by Claimant on or about: August 25, 2004.

Response to First Amended Statement of Claim filed by Respondent on or about: September 13, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; breach of implied covenant of good faith and fair dealing; breach of fiduciary duty; negligence; violation of the Arkansas Securities Act, Sections 23-42-106(a), 23-42-307, and 23-42-507; violation of Securities and Exchange Commission Rule 10b-5; fraud and misrepresentation; unjust enrichment; and, violations of statutory and common laws of the State of New York and other applicable jurisdictions. The causes of action relate to the purchase in Claimant's account of B shares of various unspecified equity mutual funds.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim, as amended, and asserted various defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$800,000.00, punitive damages in the amount of \$10,000,000.00, attorneys' fees, filing and hearing fees, litigation costs, expert witness fees and all other fees and expenses incurred in connection with this case.

Respondent requested that the relief requested in the Statement of Claim, as amended, be denied in all respects, that the

costs of this proceeding be assessed to Claimant, and that the Panel grant Respondent such other and further relief as deemed appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about August 23, 2004, the Panel issued an Order that directed Claimant to file an Amended Statement of Claim no later than September 3, 2004.

The parties 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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is not liable on any of the claims and no compensatory damages are awarded. Claimant's claims are denied in their entirety.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and Claimant's request for attorneys' fees, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 600.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

Member Surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00
Total Member Fees	= \$10,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were requested in this matter.

#### **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.

No three-day cancellation fees were assessed in this matter.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

Injunctive relief fees were not assessed in this matter.

### **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 the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: August 23, 2004 1 session	
Six (6) Hearing sessions @ \$1,200.00/session	= \$7,200.00
Hearing Dates: March 14, 2005 2 sessions	
March 15, 2005 2 sessions	
March 16, 2005 2 sessions	
<b>Total Forum Fees</b>	<b>= \$8,400.00</b>

The Panel has assessed forum fees of \$4,200.00 to Claimant.

The Panel has assessed forum fees of \$4,200.00 to Respondent.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

### **Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 4,200.00
<b>Total Fees</b>	<b>= \$ 4,800.00</b>
<b>Less Payments</b>	<b>= \$ 1,800.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,000.00</b>

Respondent is solely liable for:

Member Fees	= \$10,000.00
Forum Fees	= \$ 4,200.00
<b>Total Fees</b>	<b>= \$14,200.00</b>

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Less Payments

= \$10,000.00

Balance Due NASD Dispute Resolution

= \$ 4,200.00

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

**ARBITRATION PANEL**

Eric Spencer Buchanan, Esq.

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Public Arbitrator, Presiding Chairperson

David Byron Bogard

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Public Arbitrator

George A. Sawyer

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Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

Eric Spencer Buchanan, Esq.

Public Arbitrator, Presiding Chairperson

March 17, 2005

Signature Date

/s/

David Byron Bogard

Public Arbitrator

March 17, 2005

Signature Date

/s/

George A. Sawyer

Non-Public Arbitrator

March 18, 2005

Signature Date

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

NASD Dispute Resolution  
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Less Payments = \$10,000.00  
Balance Due NASD Dispute Resolution = \$ 4,200.00

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**ARBITRATION PANEL**

Eric Spencer Buchanan, Esq.	-	Public Arbitrator, Presiding Chairperson
David Byron Bogard	-	Public Arbitrator
George A. Sawyer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Eric Spencer Buchanan  
Eric Spencer Buchanan, Esq.  
Public Arbitrator, Presiding Chairperson

17 MAR 05  
Signature Date

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David Byron Bogard  
Public Arbitrator

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

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George A. Sawyer  
Non-Public Arbitrator

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Signature Date

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**NASD Dispute Resolution**

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<u>Loss Payments</u>	<u>- \$10,000.00</u>
Balance Due NASD Dispute Resolution	- \$ 4,200.00

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**ARBITRATION PANEL**

Eric Spencer Buchanan, Esq.

David Byron Bogard

George A. Sawyer

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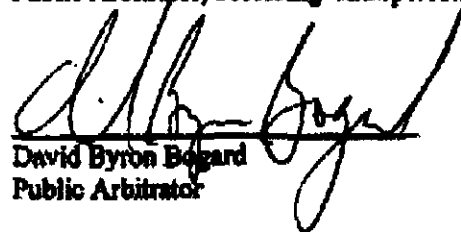
Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Eric Spencer Buchanan, Esq.  
Public Arbitrator, Presiding Chairperson

  
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David Byron Bogard  
Public Arbitrator

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Signature Date

3/17/05  
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Signature Date

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George A. Sawyer  
Non-Public Arbitrator

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Signature Date

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

NASD Dispute Resolution  
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<u>Less Payments</u>	= \$10,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 4,200.00

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**ARBITRATION PANEL**

Eric Spencer Buchanan, Esq.	-	Public Arbitrator, Presiding Chairperson
David Byron Bogard	-	Public Arbitrator
George A. Sawyer	-	Non-Public Arbitrator


**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Eric Spencer Buchanan, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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David Byron Bogard  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
George A. Sawyer  
Non-Public Arbitrator

3/18/2005  
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Signature Date

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