

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

CASE: 04-01105

Richard Giles IRRA FBO Richard Giles, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent.

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**ATTORNEYS:**

For Claimant, Richard Giles IRRA FBO Richard Giles, ("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 Melinda J. Lucas, Esq., of the firm Maynard, Cooper & Gales, P.C., Birmingham, AL.

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

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**DATE FILED:** February 2, 2004.

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**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 EMC Corporation Mass and Enron Corp Oregon stocks. Claimant maintained that as a result of Respondent's actions, his account sustained financial losses.

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**Claim Data**

Claim: \$9,056.00

Punitive: Unspecified

Interest: Unspecified

Attorney Fees: Unspecified

Filing Fees: Unspecified

Other: Unspecified

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**Award Data**

Award: \$0.00

Punitive: \$0.00

Interest: \$0.00

Attorney Fees: \$0.00

Filing Fees: \$162.50

Other: \$0.00

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**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 punitive damages are denied. 3) All requests for interest are denied. 4) All requests for attorney fees are denied. 5) All other relief requests are denied. 6) NASD Dispute Resolution shall retain the \$325.00 filing fee that the Claimant deposited previously. 6) Respondent is liable and shall pay to the Claimant \$162.50 as reimbursement of one-half of the filing fees.

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

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**OTHER ISSUES:** Arbitrator's report. See attached.

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**ARBITRATOR**  
Donald Ferguson, Esq. - Sole Public Arbitrator

**AFFIRMATION**

I, Donald Ferguson, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Donald Ferguson  
Donald Ferguson, Esq.

September 13, 2004  
Signature Date

September 15, 2004  
Date of Service (For NASD-DR office use only)

Case #04-01105

9. Attachment

1. Claimant's Motion to Strike Discovery dated May 3, 2004

Granted, except for the following paragraphs in Respondent's Request for Production of Documents and Information, dated April 23, 2004:  
Documents Requested to be Produced (in each instance the applicable period is limited to the years 2001 to date) – paragraphs 11, 25, 26, 27, 35, 36 and 37. Information Requested to be Produced – paragraphs 1, 2, 3.

2. Respondent's Motion for Evidentiary Final Hearing dated June 28, 2004

Denied

3. Respondent's Motion to Dismiss and Motion to Strike dated June 28, 2004

The motion to dismiss with respect to all claims made in the Statement of Claim based on claimant's ownership of EMC stock is granted, with prejudice.

The motion to dismiss with respect to all claims made in the Statement of Claim based on claimant's ownership of Enron stock is also granted, but without prejudice. The Statement of Claim fails to set forth the "relevant facts" with respect to claimant's claim as required by Sec. 10302, Simplified Arbitration, of the Code of Arbitration Procedure. The "relevant facts" have been aptly described as the "who, what, where, when and why" regarding the claim and these details are not found in the Statement of Claim.

Respondent also moves to strike from the Statement of Claim any references to the Dinallo Affidavit, the Settlement with the New York Attorney General, the "Global Settlement" and the "Enron Settlement". With respect to these documents as such the motion is granted. However, one or more of these documents may incorporate letters, e-mails or other material from respondent's records and this material may be persuasive evidence, subject to any valid objection counsel for respondent may make as to its authenticity, relevance or other grounds for its inadmissibility.