

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

CASE: 04-01355

Kam I. Metcalf, Claimant v. Merrill Lynch Pierce Fenner & Smith, Inc. and Phil McPhail,  
Respondents

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**ATTORNEYS:**

Claimant, Kam I. Metcalf, ("Claimant"), appeared *Pro Se*, New York, NY.

Respondents, Merrill Lynch Pierce Fenner & Smith and Phil McPhail, ("Respondents"),  
appeared through their in-house counsel, Craig Vollono, Esq., New York, NY.

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

**DATE FILED:** February 27, 2004.

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**CASE SUMMARY:** Claimant alleged that Respondent Phil McPhail failed to take into account Claimant's financial status when making certain risky trades. Claimant maintained that due to Respondent's actions, her account suffered severe financial losses.

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**Claim Data**

Claim: \$10,000.00

Punitive: \$2,000.00

Filing Fees: Unspecified

Other: \$22.00

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**Award Data**

Award: \$5,364.00

Punitive: \$1,250.00

Filing Fees: \$160.00

Other: \$.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) Respondent Merrill Lynch Pierce Fenner & Smith is liable and shall pay to the claimant \$5,364.00. 2) Respondent Merrill Lynch Pierce Fenner & Smith is liable and shall pay to the Claimant \$1,250 in punitive damages for failing to provide a broker who gave suitable advice for a client who clearly needed conservative risk and an explanation of its relation to her account when any action was recommended or taken. 3) All other relief requests are denied. 4) NASD Dispute Resolution shall retain the \$200.00 filing fee that the Claimant deposited previously. 5) Respondent is liable and shall pay to the Claimant \$160.00 as reimbursement for eighty percent of the filing fee.

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**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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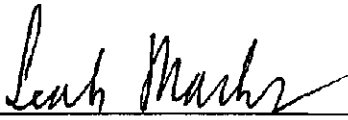
**OTHER ISSUES:** By letter dated April 27, 2004, Claimant withdrew her claims against Respondent Phil McPhail. Therefore, this matter proceeded solely against Merrill Lynch, Pierce, Fenner & Smith, Inc.

**ARBITRATOR**

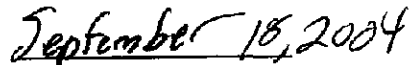
Leah Marks - Sole Public/Non-Public Arbitrator

**AFFIRMATION**

I, Leah Marks, 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.



Leah Marks



Signature Date

September 30, 2004

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