

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-01391

Edward Emrich

Name of the Respondent

Hearing Site: Charlotte, North Carolina

Merrill Lynch, Pierce, Fenner, & Smith, Inc.

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Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Claimant, Edward Emrich, hereinafter referred to as "Claimant", represented himself at the hearing.

Respondent, Merrill Lynch, Pierce, Fenner, & Smith, Inc., hereinafter referred to as "Respondent", was represented by Brett D. Sherman, Esq., Merrill Lynch, Pierce, Fenner, & Smith, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about March 1, 2004.

Amended Statement of Claimant file on June 5, 2004.

Claimant signed the Uniform Submission Agreement on April 4, 2004.

Statement of Answer filed by Respondent on May 26, 2004.

A representative of Respondent executed the Uniform Submission Agreement on July 27, 2004.

CASE SUMMARY

Claimant asserted the following causes of action, among others: negligence, failure to supervise, and unsuitability. The causes of action relate to the purchase and sale of various securities.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, any alleged losses were the result of Claimant's actions, failure to mitigate, ratification, waiver, estoppel, laches, Respondent has adequate supervisory procedures in place, any losses were the result of market conditions, statutes of limitations, and contributory negligence.

### RELIEF REQUESTED

Claimant in his Statement of Claim requested compensatory damages in the amount of \$97,713.00.

Respondent in its Statement of Answer requested the claim be dismissed with prejudice, all costs, expenses and attorneys' fees, and such other and further relief as is just and proper.

### OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Respondent made a motion for directed verdict. The Panel deferred ruling on the motion until the conclusion of the case.

The parties have 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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondent are denied in their entirety;
2. Claimant is liable to and shall pay to Respondent attorney's fees in the amount of \$6,250.00, pursuant to NASD Code of Arbitration Procedure Rules 10215 and 10214 and North Carolina General Statute Rule 11(a);
3. The parties shall bear their respective costs except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein is denied in its entirety.

### FEES

Pursuant to 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 = \$ 225.00

#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent is a party.

|                         |              |
|-------------------------|--------------|
| Member surcharge        | = \$1,100.00 |
| Pre-hearing process fee | = \$ 750.00  |
| Hearing process fee     | = \$1,750.00 |
| Total Member Fees       | = \$3,550.00 |

#### 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 Panel @ \$750.00    | = \$ 750.00  |
| Pre-hearing conference: September 17, 2004 1 session |              |
| Four (4) Hearing sessions @ \$750.00                 | = \$3,000.00 |
| Hearing Dates: March 15, 2005 2 sessions             |              |
| March 16, 2005 2 sessions                            |              |
| Total Forum Fees                                     | = \$3,750.00 |

1. The Panel has assessed \$3,750.00 of the forum fees to Claimant.

#### FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

|                                     |              |
|-------------------------------------|--------------|
| Initial Filing Fee                  | = \$ 225.00  |
| Forum Fees                          | = \$3,750.00 |
| Total Fees                          | = \$3,975.00 |
| Less payments                       | = \$ 975.00  |
| Balance Due NASD Dispute Resolution | = \$3,000.00 |

2. Respondent is assessed and shall pay the following fees:

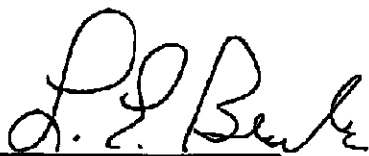
|                                     |              |
|-------------------------------------|--------------|
| Member Fees                         | = \$3,550.00 |
| Total Fees                          | = \$3,550.00 |
| Less payments                       | = \$3,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00    |

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

ARBITRATION PANEL

|                      |   |  |
|----------------------|---|--|
| Leonard E. Benade    | - | Public Arbitrator, Presiding Chairperson |
| Glenn A. Clinefelter | - | Public Arbitrator, Panelist              |
| Sandra J. Bakalus    | - | Non-Public Arbitrator, Panelist          |

Concurring Arbitrators' Signatures



Leonard E. Benade  
Public Arbitrator, Presiding Chairperson

4/28/05

Signature Date

Glenn A. Clinefelter  
Public Arbitrator, Panelist

Signature Date

Sandra J. Bakalus  
Non-Public Arbitrator, Panelist

Signature Date

April 28, 2005

Concurring Arbitrators' Signatures

Leonard E. Benade  
Public Arbitrator, Presiding Chairperson

Signature Date

Glenn A. Clinefelter  
Glenn A. Clinefelter  
Public Arbitrator, Panelist

10/27/05  
Signature Date

Sandra J. Bakalus  
Non-Public Arbitrator, Panelist

Signature Date

April 28 200  
Date of Service (For NASD Dispute Resolution office use only)

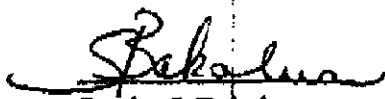
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Leonard E. Benade  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Glenn A. Clinefelter  
Public Arbitrator, Panelist

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

  
Sandra J. Bakalus  
Non-Public Arbitrator, Panelist

  
Signature Date

April 28 2005  
Date of Service (For NASD Dispute Resolution office use only)