

NASD DISPUTE RESOLUTION AWARD  
NASD DISPUTE RESOLUTION

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CASE: 04-01767

Ralph S. Fox, Jr., and Mariangela G. Fox, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

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ATTORNEYS:

For Claimants, Ralph S. Fox, Jr., and Mariangela G. Fox, ("Claimants"), appeared A. Renee Preston, 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 & Gale P.C., Birmingham, AL.

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NATURE OF DISPUTE: Customer vs. Member

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DATE FILED: March 15, 2004

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CASE SUMMARY: Claimants alleged that Respondent breached its fiduciary duty to generate analyst reports that accurately reflect its true opinions, disclose all inherent conflicts of interest, and provide accurate financial advice. Claimants further alleged that Respondent intentionally and/or recklessly misrepresented and/or omitted material facts that were necessary to make informed investment decisions in the Claimants' portfolio. Additionally, Claimants alleged that Respondent participated in and/or aided in the publication of untrue statements of material fact or omission of material facts to the Claimants. Claimants also alleged that Respondent was in breach of its contract to engage in fair dealing with its clients. Claimants maintained that as a result of Respondent's actions, their account suffered financial losses.

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ARBITRATOR'S REPORT:

Motion for Evidentiary Hearing by Respondent is denied.

Motion to Strike Discovery by Claimant is granted.

Motion to Dismiss Claim and Strike by Respondent is granted.

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Claim Data

Claim: \$20,986.09

Punitive: Unspecified

Interest: Unspecified

Attorney Fees: Unspecified

Filing Fees: Unspecified

Other: Unspecified

Award Data

Award: \$.00

Punitive: \$.00

Interest: \$.00

Attorney Fees: \$.00

Filing Fees: \$212.50

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) The claims of Claimants are dismissed in their entirety. 2) All requests for punitive damages are denied. 3) All requests for attorney fees are denied. 4) All requests for interest are denied. 5) All other relief requests are denied. 6) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimants deposited previously. 7) Respondent is liable and shall pay Claimants \$212.50 as reimbursement of one-half of the filing fee.

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OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

**ARBITRATOR**

William A. Westlake - Sole Public Arbitrator

**AFFIRMATION**

I, William A. Westlake, 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.

  
William A. Westlake

  
Signature Date

November 19, 2004  
Date of Service (For NASD-DR office use only)