

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 04-02021

Mark Swab and Noelle Dye, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,
Respondent

ATTORNEYS:

For Claimants Mark Swab and Noelle Dye (collectively "Claimants") appeared Marshall P. Richer, Esq. and Joel S. Finkelstein, Esq., of the firm Finkelstein & Partners, Albany, NY.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") appeared A. Inge Selden, III, Esq., of the firm Maynard, Cooper & Gale, P.C., Birmingham, AL.

NATURE OF DISPUTE: Customers vs. Member.

DATE FILED: March 25, 2004.

CASE SUMMARY: Claimants alleged that Respondent provided fraudulent analyst reports, which recommended the purchase of, and set target prices for the common stock of companies without any reasonable factual basis. Claimants further alleged breach of fiduciary duty, fraud, negligent misrepresentation, negligence, violation of Massachusetts Blue Sky Law (Massachusetts General Laws, C. 110A, §410(a)(1), and breach of contract. Claimants maintained that due to Respondent's actions, their account suffered losses. Claimants' claim involved shares of ICGE stock.

ARBITRATOR'S REPORT: "I have reviewed all of the evidence in the above case. Based on that evidence, I find that Respondent Merrill Lynch breached the fiduciary duty that it owed Claimants. In addition, I find that Respondent Merrill Lynch acted fraudulently toward Claimants. Thus, I find for the Claimants on their claims for breach of fiduciary duty and fraud. I hereby order Respondent Merrill Lynch to pay Claimants \$17,311.50 in compensatory damages, plus interest from March 20, 2004, the date the Claimants filed their claim, until the date of this decision. Interest shall accrue at the rate of twelve percent, the statutory rate under Mass. Gen. Laws ch.231, § 6B. Respondent Merrill Lynch shall also be responsible for the NASD hearing costs associated with this matter."

Claim Data

Claim: \$17,311.50
Punitive: \$7,600.00
Interest: Unspecified

Attorney Fees: Unspecified
Filing Fees: Unspecified
Other: Unspecified

Award Data

Award: \$17,311.50
Punitive: \$0.00
Interest: @ 12% from 3/20/04 -
03/14/05.
Attorney Fees: \$0.00
Filing Fees: \$425.00
Other: \$0.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

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1) Respondent is liable for and shall pay to Claimants \$17,311.50. 2) Respondent is liable for and shall pay to Claimants interest at the rate of 12%, from March 20, 2004 to March 14, 2005. 3) All requests for punitive damages are denied. 4) All requests for attorney fees 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 \$425.00 as reimbursement of the filing fee.

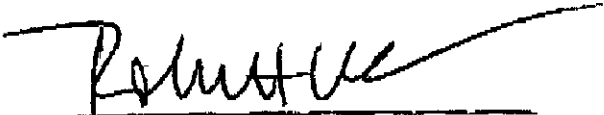
OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

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ARBITRATOR
Robert Volk, Esq. - Sole Public Arbitrator

AFFIRMATION

I, Robert Volk, Esq., 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.


Robert Volk, Esq.


Signature Date

April 11, 2005
Date of Service (For NASD-DR office use only)