

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 04-02177

Joseph Ditaranto and Carmella Ditaranto, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

ATTORNEYS:

For Claimants, Joseph Ditaranto and Carmella Ditaranto, ("Claimants"), 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 Teri R. Weiss, Esq., of the firm Sutherland, Asbill & Brennan, LLP, Atlanta, GA.

NATURE OF DISPUTE: Customer vs. Member.

DATE FILED: March 30, 2004

CASE SUMMARY: Claimant 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. Claimant further alleged that Respondent intentionally and/or recklessly misrepresented and/or omitted material facts that were necessary to make informed investment decisions in the Claimant's portfolio. Additionally, Claimant alleged that Respondent participated in and/or aided in the publication of untrue statements of material fact or omission of material facts to the Claimant. Claimant also alleged that Respondent was in breach of its contract to engage in fair dealing with its clients. Claimant maintained that as a result of Respondent's actions, his account suffered financial losses.

ARBITRATOR'S REPORT:

Respondent's Motion to Strike Claimant's reference to various submissions in Claimant's Statement of Claim is denied.

Respondent's Motion for Evidentiary Final Hearing is denied.

Respondent's Motion for More Definite Statement is denied.

Claim Data

Claim: \$24,425.00

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: \$.00

Other: \$.00

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 Claimant 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 Claimant deposited previously.

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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.

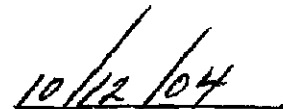
ARBITRATOR

Gordon M. Wase, Esq. - Sole Public Arbitrator

AFFIRMATION

I, Gordon M. Wase, 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.


Gordon M. Wase, Esq.


Signature Date

October 25, 2004
Date of Service (For NASD-DR office use only)