

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

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In the Matter of the Arbitration Between:

Rick Taylor, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Steve Blasi, and Brian Britt, Respondents

Case Number: 04-02440

Hearing Site: San Diego, California

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Nature of the Dispute: Customer v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

John C. Wynne, Esq.  
Steven T. Coopersmith, Esq.  
Duckor, Spradling, Metzger & Wynne  
San Diego, California

For Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
and Brian Britt:

James P. Delphey, Esq.  
Robert M. Traylor, Esq.  
Seltzer, Caplan, McMahon, & Vitek  
San Diego, California

For Respondent Steve Blasi:

Michael T. McColloch, Esq.  
McColloch & Campitiello, LLP  
Carlsbad, California

**CASE INFORMATION**

Statement of Claim filed on or about: April 6, 2004

Claimant's Uniform Submission Agreement signed: March 30, 2004

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Brian Britt: August 31, 2004

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement signed: June 1, 2004

Respondent Brian Britt's Uniform Submission Agreement signed: July 29, 2004

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, negligence, and negligent supervision, involving Provident Council and Genesis funds.

Unless specifically admitted in its Answer, Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Brian Britt denied the allegations made in the Statement of Claim and asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$3,700,000.00, unspecified punitive damages, and costs, including attorney's fees.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Brian Britt requested dismissal of the Claimant's Statement of Claim in its entirety, forum fees, and costs, including attorney's fees. Additionally, Respondent Brian Britt requested that the Panel order the expungement of this matter from his regulatory records.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On September 21, 2004, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the *Code of Arbitration Procedure* ("Code") IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On September 30, 2004, NASD Dispute Resolution received Respondent Steve Blasi's Special Appearance to Contest Jurisdiction. Respondent Stephen Blasi requested that this matter be dismissed against him for lack of jurisdiction and requested reimbursement of costs.

On January 3, 2005, NASD Dispute Resolution received Claimant's request for the Panel to dismiss Respondent Stephen Blasi. The Panel dismissed Respondent Stephen Blasi with prejudice.

At the evidentiary hearing, Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Brian Britt moved to dismiss the claim at the conclusion of Claimant's case. Claimant opposed Respondents' motion. After due deliberation, the Panel granted Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Brian Britt's motion.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Panel granted Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Brian Britt's Motion to Dismiss at the close of Claimant's case. The claim is hereby dismissed with prejudice against all Respondents.
- 2) The Panel specifically found that registered person Brian Britt was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds and directs that his record be expunged.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Brian Britt's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Brian Britt must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall pay any and all of Respondent Brian Britt's attorney's fees.
- 5) Except as noted in #4 above, the parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 600.00
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**Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00
<b>Total Member Fees</b>	<b>= \$ 8,550.00</b>

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, 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 conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: April 29, 2005	1 session

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: November 29, 2004	1 session

Ten (10) Hearing sessions @ \$1,200.00/session	= \$12,000.00
Hearings:	
May 16, 2005	2 sessions
May 17, 2005	2 sessions
May 18, 2005	2 sessions
May 19, 2005	2 sessions
May 20, 2005	2 sessions

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<b>Total Forum Fees</b>	<b>= \$13,650.00</b>
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1. The Panel assessed \$6,825.00 of the forum fees to Claimant.
2. The Panel assessed \$6,825.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 6,825.00
Total Fees	= \$ 7,425.00
Less payments	= \$( 1,800.00)
Balance Due NASD Dispute Resolution	= \$ 5,625.00

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 6,825.00
Total Fees	= \$15,375.00
Less payments	= \$(9,300.00)
Balance Due NASD Dispute Resolution	= \$ 6,075.00

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

ARBITRATION PANEL

Janice L. Sperow	-	Public Arbitrator, Presiding Chair
F. Philip Manns, Jr.	-	Public Arbitrator
Lisa M. Roth	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Janice L. Sperow  
Chair, Public Arbitrator

5/25/05  
Signature Date

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F. Philip Manns, Jr.  
Public Arbitrator

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

\_\_\_\_\_  
Lisa M. Roth  
Non-Public Arbitrator

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Signature Date

May 25, 2005  
Date of Service

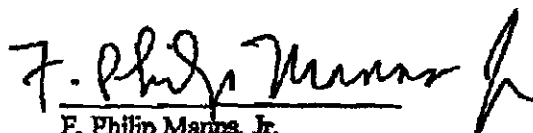
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F. Philip Manns, Jr.	-	Public Arbitrator
Lisa M. Roth	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Janice L. Sperow  
Chair, Public Arbitrator

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

  
\_\_\_\_\_  
F. Philip Manns, Jr.  
Public Arbitrator

25 MAY 2005  
Signature Date

\_\_\_\_\_  
Lisa M. Roth  
Non-Public Arbitrator

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

May 25, 2005  
Date of Service

**ARBITRATION PANEL**

Janice L. Spencer	-	Public Arbitrator, Presiding Chair
F. Philip Manns, Jr.	-	Public Arbitrator
Lisa M. Roth	-	Non-Public Arbitrator

**Consenting Arbitrators' Signatures**

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Janice L. Spencer  
Chair, Public Arbitrator

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

\_\_\_\_\_  
F. Philip Manns, Jr.  
Public Arbitrator

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

  
\_\_\_\_\_  
Lisa M. Roth  
Non-Public Arbitrator

5/31/05  
Signature Date

\_\_\_\_\_  
Date of Service