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

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In the Matter of the Arbitration Between:

Name of the Claimant

K. Jeffrey Dean

Case Number: 04-04363

Name of the Respondent

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

Hearing Site: Chicago, Illinois

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant, K. Jeffrey Dean, ("Dean") or, ("Claimant"), was represented by Thomas Burke, Esq., of Thomas Burke, P.C., located in Chicago, Illinois.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., ("Merrill Lynch") and Gerard Smith, ("Smith"), hereinafter referred to as "Respondents": were represented by Michael Wise, Esq., and John Monical, Esq., of Lawrence, Kamin, Saunders & Uhlenhop, located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: June 21, 2004.

Claimant, Dean, signed the Uniform Submission Agreement: June 14, 2004.

*Joint Statement of Answer filed by Respondents on or about: September 14, 2004.*

Respondent Merrill Lynch, signed the Uniform Submission Agreement: June 1, 2004.

Respondent Smith signed the Uniform Submission Agreement on September 14, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: common law fraud; breach of fiduciary duty; Illinois Consumer Fraud and Deceptive Practices Act; Illinois Securities Law of 1953; common law negligence; willful and wanton misconduct; negligent supervision; and breach of contract.

Claimant's allegations are in connection with the purchase and sale of Conagra stock.

Unless specifically admitted their Joint Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant actively sought an aggressive portfolio; Claimant would only place a portion of his portfolio with third party managers, and desired the most aggressive strategies; Claimant refused to diversify his holdings; Respondents recommendations were suitable; respondent did not fail to supervise; Claimant cannot prevail under the Illinois Consumer Fraud Act; Claimant's losses were due to market declines; Claimant ratified all trades entered in his account; Claimant is estopped from asserting a claim for damages; and, Claimant was fully informed and agreed with the recommended investments.

### **RELIEF REQUESTED**

Claimant(s) requested:

Compensatory Damages	\$ 1,075,164.17
Punitive Damages	\$ unspecified
Interest	\$ unspecified
Attorneys' Fees	\$ unspecified
Other Costs	\$ unspecified
Other Monetary/Non-Monetary Relief if any:	

Respondents requested that the Claimant's Claims be dismissed in their entirety with prejudice and that they be awarded costs and attorneys fees.

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

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., and Gerard Smith, are liable to Claimant K. Jeffrey Dean and shall pay the sum of \$244,000.00 in compensatory damages;
2. Any relief not specifically addressed herein is denied with prejudice; and,
3. Other than the forum fees specified below, each party shall bear their own costs and attorneys' fees.

### **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 = \$ 500.00

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party to this action.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

### **Forum Fees and Assessments**

The Arbitrator (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:

Two (2) Pre-hearing sessions with the Panel at \$1,200.00	= \$ 2,400.00
Pre-hearing conference(s): December 16, 2004 1 session	
April 4, 2005 1 session	

Six (6) Hearing sessions at \$1,200.00	= \$ 7,200.00
Hearing Date(s): June 14, 2005 2 sessions	
June 15, 2005 2 sessions	
June 16, 2005 2 sessions	

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Total Forum Fees	= \$ 9,600.00
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1. The Panel has assessed \$ 4,800.00 of the forum fees to Claimant Dean.
2. The Panel has assessed \$ 4,800.00 of the forum fees to Respondent Merrill Lynch.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 4,800.00
Total Fees	= \$ 5,300.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

3. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 4,800.00
Total Fees	= \$ 13,350.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00

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

**ARBITRATION PANEL**

James P. O'Donnell-Public Arbitrator, Presiding Chairperson  
Gregory D. Bruno, Esq.-Public Arbitrator  
John E. Sundeen - Non-Public Arbitrator

**Concurring Arbitrators' Signature(s)**

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James P. O'Donnell  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Gregory D. Bruno  
Public Arbitrator

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

\_\_\_\_\_  
John E. Sundeen  
Non-Public Arbitrator

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

July 15, 2005  
Date of Service (For NASD Dispute Resolution use only)

07/09/2005 19:49  
07/17/2005 10:09 FAX

O'DONNELL

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**ARBITRATION PANEL**

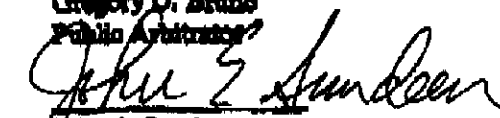
James P. O'Donnell-Public Arbitrator, Presiding Chairperson  
Gregory D. Bruno, Esq.-Public Arbitrator  
John E. Sundeen - Non-Public Arbitrator

**Concurring Arbitrators' Signatures(s)**

  
James P. O'Donnell  
Public Arbitrator, Presiding Chairperson

7/12/05  
Signature Date

Gregory D. Bruno  
Public Arbitrator

  
John E. Sundeen  
Non-Public Arbitrator

Signature Date

7/15/2005  
Signature Date

Date of Service (For NASD Dispute Resolution use only)