

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Names of Claimants

Charlotte B. and James C. Ryan, Sr.

and

Case Number: 04-04764  
Hearing Site: Houston, Texas

Names of Respondents

Multi-Financial Securities Corporation,  
Sanders Morris Harris, Inc., and  
Bert Earl Miller, Jr.

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**NATURE OF DISPUTE**

Customers v. Member Firms and Associated Person

**REPRESENTATION OF PARTIES**

Charlotte B. and James C. Ryan, Sr. ("**Claimants**") were represented by Brian E. Bro, Esq., Law Offices of Brian E. Bro, Houston, Texas.

Multi-Financial Securities Corporation ("**Multi-Financial**") was represented by Wesley Ward, Esq., Fulbright & Jaworski, LLP, Houston, Texas.

Sanders Morris Harris, Inc. ("**Sanders Morris Harris**") was represented by Steve Sosnik Hwang, Esq., Wilson, Elser, Moskowitz, Edelman and Dicker, LLP, Houston, Texas.

Bert Earl Miller, Jr. ("**Miller**") was represented by Edwin J. Tomko, Esq., McManemin & Smith, Dallas, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 2, 2004. The Submission Agreement of Claimants, Charlotte B. and James C. Ryan, Sr., was signed on or about June 14, 2004. On or about February 1, 2005, Claimants filed a response to Respondent Miller's Motion to Dismiss. On or about February 18, 2005, Claimants filed a Sur-Reply to Respondent Miller's Motion to Dismiss.

A Statement of Answer was filed by Respondent, Multi-Financial Securities Corporation on, or about September 29, 2004. The Submission Agreement of Respondent, Multi-Financial Securities Corporation, was signed on or about August 27, 2004.

A Statement of Answer was filed by Respondent, Sanders Morris Harris, Inc., on or about September 22, 2004. The Submission Agreement of Respondent, Sanders Morris Harris, was signed on or about October 12, 2004.

A Statement of Answer was filed by Respondent, Bert Earl Miller, Jr., on or about September 27, 2004. The Submission Agreement of Respondent, Bert Earl Miller, Jr., was signed on or about September 3, 2004. On or about January 21, 2005, Respondent Miller filed a Motion to Dismiss. On or about February 14, 2005, Respondent Miller filed a Reply in Support of his Motion to Dismiss.

### **CASE SUMMARY**

Claimants asserted the following causes of action: failure to supervise, breach of fiduciary duty, misrepresentations, omission of facts, and suitability. The causes of action related to the recommendation and purchase of ten (10) unspecified mutual funds; seven (7) of which were B-share mutual funds and three (3) of which were A-share mutual funds. Claimant alleged that Respondents failed to explain the differences in fees and expenses between A-share, B-share and C-share mutual funds. Claimants also alleged that Respondent Miller failed to properly profile Claimants and/or did not properly apply the profile information obtained from Claimants to appropriately allocate Claimants' investment portfolio in investments that were suitable for their situation.

Unless specifically admitted in its Answer, Respondent, Multi-Financial, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to mitigate their damages; Claimants ratified each and every transaction; Claimants' claims are barred in whole or in part by the doctrine of equitable estoppel; Claimants waived any right to object to transactions in their accounts; Claimants' causes of action for negligence are barred in whole or in part by the doctrine of contributory negligence; Claimants failed to state a claim upon which relief can be granted; and Claimants' causes of action are barred by the applicable statutes of limitations.

Unless specifically admitted in its Answer, Respondent, Sanders Morris Harris, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to state a claim upon which relief can be granted; Claimants failed to properly communicate their investment goals and objectives; Claimants voluntarily and knowingly accepted and assumed the risk that such securities would decrease in value; and Claimants' claims based on negligence causes of action are barred by the applicable two years statute of limitations.

Unless specifically admitted in his Answer, Respondent Miller denied the allegations made

in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to mitigate their damages; Claimants ratified each and every transaction in their accounts; Claimants' claims are barred in whole or in part by the doctrine of equitable estoppel; Claimants waived any right to object to transactions in their accounts' Claimants' causes of action for negligence are barred in whole or in part by the doctrine of contributory or comparative negligence; and Claimants failed to state a claim upon which relief can be granted.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$361,262.00
Punitive/Exemplary Damages	\$200,000.00
Interest	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent, Multi-Financial, requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Respondent, Sanders Morris Harris, requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Respondent Miller requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

On or about April 15, 2005, the Panel issued an Order stating the following:

Respondent Miller's Motion to Dismiss is hereby held in abeyance until the final hearing on the merits, or until such other time as Respondent Miller re-urges such motion.

On or about June 30, 2005, Claimant settled all claims against Respondent, Multi-Financial Securities Corporation.

On or about July 20, 2005, Claimant settled all claims against Respondent, Sanders Morris Harris.

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 the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Bert Earl Miller, Jr., is liable for and shall pay to Claimants, Charlotte B. and James C. Ryan, Sr., the sum of \$50,000.00 in compensatory damages;
- 2.) Respondent, Bert Earl Miller, Jr., is liable for and shall pay to Claimants, Charlotte B. and James C. Ryan, Sr., the sum of \$10,000.00 in attorneys' fees based on the evidence presented at the final hearing as well as the post-hearing submissions;
- 3.) Respondent, Bert Earl Miller, Jr., is liable for and shall pay to Claimants, Charlotte B. and James C. Ryan, Sr., the sum of \$375.00 in costs;
- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 5.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 375.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving

rise to the dispute. In this matter, the member firms are Multi-Financial Securities Corporation and Sanders Morris Harris, Inc.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

### **Adjournment Fees**

Adjournments granted during these proceedings:

June 14-17, 2005, adjournment requested by Respondent Miller	= \$ 1,200.00
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### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel x \$1,200.00	= \$ 3,600.00
Pre-hearing conferences: November 19, 2004	1 session
March 14, 2005	1 session
April 15, 2005	1 session
Seven (7) Hearing sessions x \$1,200.00	= \$ 8,400.00
Hearing Dates: August 2, 2005	2 sessions
August 3, 2005	2 sessions
August 4, 2005	2 sessions
August 5, 2005	1 session
Total Forum Fees	= \$ 12,000.00

The Arbitration Panel has assessed \$12,000.00 of the forum fees to Bert Earl Miller, Jr.

### **Fee Summary**

Claimants, Charlotte B. and James C. Ryan, Sr., are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 1,575.00
Refund Due to Claimants	= \$ 1,200.00

Respondent, Multi-Financial Securities Corporation, is liable for:

<u>Member Fees</u>	= \$ 7,000.00
<u>Total Fees</u>	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, Sanders Morris Harris, is liable for:

<u>Member Fees</u>	= \$ 7,000.00
<u>Total Fees</u>	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent, Bert Miller, is liable for:

<u>Adjournment Fee</u>	= \$ 1,200.00
<u>Forum Fees</u>	= \$ 12,000.00
<u>Total Fees</u>	= \$ 13,200.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 13,200.00

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

**ARBITRATION PANEL**

Thomas A. Martin - Public Arbitrator, Presiding Chair  
Philip I. McConnell, Esq. - Public Arbitrator  
James M. Alexander - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Thomas A. Martin  
Thomas A. Martin  
Public Arbitrator, Presiding Chair

August 31, 2005  
Signature Date

/s/ Philip I. McConnell, Esq.  
Philip I. McConnell, Esq.  
Public Arbitrator

September 1, 2005  
Signature Date

/s/ James M. Alexander  
James M. Alexander  
Non-Public Arbitrator

August 31, 2005  
Signature Date

August 31, 2005  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Thomas A. Martin - Public Arbitrator, Presiding Chair  
Philip I. McConnell, Esq. - Public Arbitrator  
James M. Alexander - Non-Public Arbitrator

**Concurring Arbitrators:**

Thomas A. Martin  
Thomas A. Martin  
Public Arbitrator, Presiding Chair

08-31-05  
Signature Date

Philip I. McConnell, Esq.  
Philip I. McConnell, Esq.  
Public Arbitrator

                      
Signature Date

James M. Alexander  
James M. Alexander  
Non-Public Arbitrator

                      
Signature Date

                      
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**Philip I. McConnell, Esq. - Public Arbitrator**  
**James M. Alexander - Non-Public Arbitrator**

**Concurring Arbitrators:**

**Thomas A. Martin**  
**Public Arbitrator, Presiding Chair**

*Philip I. McConnell*

**Philip I. McConnell, Esq.**  
**Public Arbitrator**

**Signature Date**

*9-1-05*

**Signature Date**

**James M. Alexander**  
**Non-Public Arbitrator**

**Signature Date**

**Date of Service (For NASD office use only)**

**ARBITRATION PANEL**

Thomas A. Martin - Public Arbitrator, Presiding Chair  
Philip I. McConnell, Esq. - Public Arbitrator  
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**Concurring Arbitrators:**

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