

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

---

CASE: 04-04797

Katherine B. Thibideau, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and James Edward Burkhart, Respondents

---

**ATTORNEYS:**

For Claimant Katherine B. Thibideau ("Claimant") appeared David N. Cole, Esq., Hanover, NH.

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and James Edward Burkhart (collectively "Respondents") appeared Emillia M. DeMeo, Esq., in-house counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY

---

**NATURE OF DISPUTE:** Customer v. Member and Associated Person.

---

**DATE FILED:** July 7, 2004.

---

**CASE SUMMARY:** Claimant alleged that Respondent James Edward Burkhart breached his fiduciary duty and purchased a Hechinger Co. Subordinated Debenture Convertible Bond which was not suitable for her age or investment objectives. Claimant further alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. inadequately supervised James Edward Burkhart. Claimant maintained that due to Respondents' actions, her account suffered losses.

---

**ARBITRATOR'S REPORT:** Brokers and financial advisers are not automatically fiduciaries. In the absence of a showing of a fiduciary relationship or of fraudulent concealment, the limitation period under the NASD Code of Arbitration Procedure commenced in 1995.

---

**Claim Data**

Claim: \$9,754.00  
Punitive: \$15,245.00  
Attorney Fees: Unspecified  
Filing Fees: \$425.00  
Other: Unspecified

**Award Data**

Award: \$.00  
Punitive: \$.00  
Attorney Fees: \$.00  
Filing Fees: \$212.50  
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 attorney fees are denied. 3) All requests for punitive damages are denied. 4) All other relief requests are denied. 5) Respondent James Edward Burkhart's request for expungement is denied. 6) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously. 6) Respondents are jointly and severally liable and shall pay claimant \$212.50 as reimbursement of one-half of the filing fee.

---

**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.

Page Two  
Award 04-04797

Lawrence R. Bowers, Esq. - Sole Public Arbitrator

AFFIRMATION

I, Lawrence R. Bowers, 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.

Lawrence R. Bowers  
Lawrence R. Bowers, Esq.

December 27, 2004  
Signature Date

January 10, 2005  
Date of Service (For NASD-DR office use only)