

---

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

---

In the Matter of the Arbitration Between:

Names of the Claimants

James R. Oellerich and Jane H. Oellerich

Case Number: 04-05033

Name of the Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

Hearing Site: Atlanta, Georgia

---

Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

For James R. Oellerich ("JRO") and Jane H. Oellerich ("JHO"), hereinafter collectively referred to as "Claimants": Edward J. Dovin, Esq., Gard Smiley Bishop & Dovin LLP, Atlanta, Georgia.

For Merrill Lynch Pierce Fenner & Smith, Inc., hereinafter referred to as "Respondent": Brett D. Sherman, Senior Counsel, Merrill Lynch Pierce Fenner & Smith, Inc., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: September 13, 2004.

Claimants signed the Uniform Submission Agreement: June 22, 2004.

Statement of Answer filed by Respondent on or about: October 18, 2004.

Respondent signed the Uniform Submission Agreement: October 19, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) negligence/ breach of NASD and NYSE Rules, breach of contract and breach of duty; 3) common law fraud and misrepresentation; 4) violation of the Georgia Securities Act of 1973 and, 5) failure to supervise. The causes of action relate to the purchase in Claimants' account of technology stocks and mutual funds, including the following: Broadcom; EMC; JDS Uniphase; PMC Sierra; Sun Microsystems; AIM Value; Delaware Select; Dreyfus Premier Technology; and, Sunamerica Style Select.

Unless specifically admitted in their Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

**RELIEF REQUESTED**

Claimants requested actual damages in an amount in excess of \$120,000.00, an unspecified amount of

punitive damages, costs including expenses, disbursements and attorneys' fees, pre-award and post-award interest, and such other relief as Panel deemed just and proper.

Respondent requested that the Statement of Claim be dismissed in its entirety, that Respondent be awarded the costs and expenses of this arbitration including forum fees and reasonable attorney fees, and such other relief as the Panel deemed just and proper.

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

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

Respondent is liable and shall pay to Claimants compensatory damages in the amount of \$62,714.00, pre-award interest specifically excluded. Respondent is further liable and shall pay to Claimants post-judgment interest on the compensatory damages awarded, calculated at the rate of 6% per annum, accruing 30 days after the service of this Award until paid.

Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive damages and attorneys' fees, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 300.00
--------------------------	-------------

#### **Member Fees**

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

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

**Forum Fees and Assessments**

The 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:

One (1) Pre-hearing session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: December 14, 2004 1 session	
Six (6) Hearing sessions with the Panel @ \$1,125.00/session	= \$ 6,750.00
Hearing Dates: September 20, 2005 2 sessions	
September 21, 2005 2 sessions	
September 22, 2005 2 sessions	
<hr/>	
Total Forum Fees	= \$ 7,875.00

The Panel has assessed \$3,937.50 of the forum fees jointly and severally to Claimants

The Panel has assessed \$3,937.50 of the forum fees to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs assessed during these proceedings.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum fees</u>	<u>= \$ 3,937.50</u>
Total Fees	= \$ 4,237.50
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,812.50

2. Respondent is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$3,937.50</u>
Total Fees	= \$9,137.50
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$3,937.50

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

**ARBITRATION PANEL**

John E. Meador, Jr.	-	Public Arbitrator, Presiding Chairperson
Judith Stiltz Ogden, JD	-	Public Arbitrator
David E. Hulstrom, MBA, CFP	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

10/11/05

John E. Meador, Jr.  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

10/11/05

Judith Stiltz Ogden, JD  
Public Arbitrator

Signature Date

/s/

10/12/05

David E. Hulstrom, MBA, CFP.  
Non-Public Arbitrator

Signature Date

October 12, 2005

Date of Service (For NASD Dispute Resolution office use only)

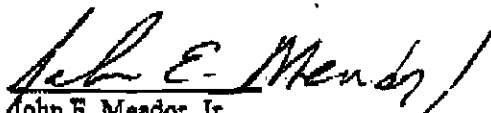
FROM : JOHN E. MEADOR

10/11/05 8:55AM NASD Resolution

Arbitration No. 04-05033

Award Page 5 of 5

Concurring Arbitrators' Signatures



John E. Meador, Jr.

Public Arbitrator, Presiding Chairperson



Signature Date

Judith Stiltz Ogden, JD

Public Arbitrator

Signature Date

David E. Hulstrom, MBA, CFP.

Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

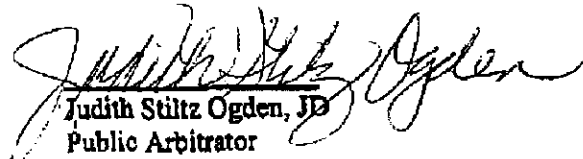
Oct 11 05 05:21p

( 10-10-05 10:00AM NASD  
NASD Dispute Resolution  
Arbitration No. 04-05033  
Award Page 5 of 5

Concurring Arbitrators' Signatures

John E. Meador, Jr.  
Public Arbitrator, Presiding Chairperson

Signature Date

  
Judith Stiltz Ogden, JD  
Public Arbitrator

10/11/05  
Signature Date

David E. Hulstrom, MBA, CFP.  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

Arbitration No. 04-05033  
Award Page 5 of 5

Concurring Arbitrators' Signatures

John B. Meador, Jr.  
Public Arbitrator, Presiding Chairperson

Signature Date

Judith Stiltz Ogden, JD  
Public Arbitrator

Signature Date

  
David E. Hulstrom, MBA, CFP.  
Non-Public Arbitrator

10-12-05  
Signature Date

Date of Service (For NASD Dispute Resolution office use only)