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**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

Pasqual J. Talerico

93-03017

**Names of Respondents**

Merrill Lynch Pierce Fenner & Smith Inc  
Scott M. Griswold

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**REPRESENTATION**

For Claimant, Pasqual J. Talerico ("Talerico"), Jane A. Sirak, Esq. of West Palm Beach, Florida.

For Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("M.L."), Michael E. Olney, Esq. of Merrill Lynch, New York, New York.

For Respondent, Scott M. Griswold ("Griswold"), pro se - see ("Other Issues").

**CASE INFORMATION**

Statement of Claim filed: July 20, 1993. Claimant's Submission Agreement signed on: May 10, 1993.

Respondent, M.L.'s, Statement of Answer filed on October 6, 1993. Respondent, M.L.'s Submission Agreement signed on October 6, 1993 by John R. Cummings on behalf of the firm.

Respondent, Griswold's, Statement of Answer filed on September 7, 1993. Respondent, Griswold's Submission Agreement signed on September 7, 1993.

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### HEARING INFORMATION

On April 28, 1995, a prehearing conference lasting 1 session was conducted via telephone conference call with an arbitrator.

On May 4, and 5, 1995, in Fort Lauderdale, Florida, a hearing lasting four (4) sessions was conducted.

### CASE SUMMARY

Claimant, alleged that he was an uneducated, unsophisticated, inexperienced investor and that Respondent, M.L. through its broker, Griswold, sold him stocks in a company called United Products International, Inc. ("UPI") and that he paid \$50,000 and never received the stocks or any payments pursuant to the Stock Purchase Agreement; that M.L., through its employee and agent, Griswold, engaged in a pattern of selling investments to M.L. clients outside of M.L. Claimant further alleged that said investment was misrepresented to him and M.L. is liable for his damages wherein the investment was recommended to him by its broker and agent, Griswold, who was Claimant's broker at M.L. Claimant alleged Fraud; Violation of Florida Statutes Chapter 517, et seq; Violations of Florida Statutes Chapter 772, et. seq; Civil Theft; Breach of Fiduciary Duty; Negligent Supervision; Gross Negligence and Respondeat Superior, and that M.L. is liable for the fraud of its agent pursuant to Florida law on agency principal and apparent authority of agents. Claimant further alleged that (1) M.L. was negligent, and/or grossly negligent and/or reckless in filing a false U-5 indicating that the broker resigned to pursue other interests; that said U-5 was much later amended to state that M.L. had terminated him for selling away. (2) Allegedly sending a misleading letter to Griswold's clients, and (3) not contacting said M.L. clients to discuss their accounts and investments.

Respondent, Griswold, in his Statement of Answer, denied all allegations of wrongdoing contained in the Statement of Claim and alleged that Claimant was a speculative investor, whose sole conservative investment in his life had been the individual retirement account at M.L., which was not in issue. Griswold further denied all allegations that he had represented any connection between M.L. and UPI and that he had represented to Claimant that an investment in UPI "was a sure thing" and stated that he had reviewed materials concerning UPI solely as an accommodation to Claimant as a client, and that he had warned Claimant of the speculative nature of the investment. In his Statement of Answer Griswold further acknowledged that he may have guaranteed Claimant's signature but stated that he did not reassure Claimant of the safety of his investment.

Respondent, M.L., admitted that Claimant had opened up an IRA account with Griswold at its Palm Beach Gardens office but denied any knowledge or information concerning UPI at all times material to the dispute. M.L. further stated that none of the documents pertaining to Claimant's IRA account referred to or reflected in any way the UPI investment and that further, none of the documents pertaining to Claimant's UPI investment referred to M.L. Respondent,

M.L. further alleged that when it became aware that Griswold had engaged in "selling away" activity in another customer's account involving another investment, it promptly terminated Griswold.

**RELIEF REQUESTED**

Claimant requested \$50,000.00 in compensatory damages, a minimum of \$150,000.00 in punitive damages; reasonable attorney's fees, prejudgment interest, the costs of this action, treble damages pursuant to Section 772 of the Florida Statutes and any other relief as the arbitrators deem appropriate under the circumstances, and that M.L. and Scott Griswold be held jointly and severally liable.

Respondent, M.L. requested that the instant claim be denied in all respects together with such other and further relief as is deemed just and proper.

**OTHER ISSUES CONSIDERED & DECIDED**

1. Although Respondent, Griswold submitted a Statement of Answer and executed a Submission Agreement as required under Sections 12 and 25 of the Code of Arbitration Procedure, he did not appear at the hearing. Pursuant to Section 29 of the Code of Arbitration Procedure, and based upon evidence in Arbitrator's Exhibit No. 1. this arbitration panel proceeded with the hearing in his absence.

2. 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 originals remain on file with the NASD.

**AWARD**

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

1. Respondent, M.L., is found not liable and, therefore, all claims against it are hereby dismissed.

2. Respondent, Griswold, is found liable, and shall pay to the Claimant the amount of \$50,000.00 plus interest at the legal rate of 12% per annum (from May 3, 1991 to May 3, 1995) in the amount of \$24,000.00 for a total of \$74,000.00.

3. Respondent, Griswold, is further found liable, and shall pay to the Claimant attorney's fees pursuant to Section 517; Florida Statutes, the amount of which shall be determined by a court of competent jurisdiction.

4. Claimant's request for punitive damages is hereby denied.

5. Claimant's request for treble damages is hereby denied.

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### OTHER COSTS

Apart from the Forum Fees assessed below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed Forum fees in the amount of \$3,300.00 (four (4) hearing sessions X \$750.00 + one pre hearing telephone conference X \$300.00).

1. Claimant is hereby assessed forum fees in the amount of \$1,100.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD by Claimant of \$350.00.
2. Respondents, M.L. and Griswold, are hereby jointly and severally assessed forum fees in the amount of \$2,200.00 payable to the NASD, Inc.
3. The NASD shall retain the non-refundable filing fee of \$200.00 paid by Claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

### ARBITRATION PANEL

#### Concurring Arbitrators' Signatures

| Name                                     | Public/Industry   |
|--|-------------------|
| /s/<br>_____<br>Arthur J. Leibell, Esq., | Public/Chairman   |
| /s/<br>_____<br>Irving I. Hanzman        | Industry/Panelist |
| /s/<br>_____<br>George S. Webster, Esq.  | Public/Panelist   |

Date of Decision: May 31, 1995