

**Award**  
**NASD Regulation, Inc.**

In the Matter of the Arbitration Between

Name of Claimants

Russell W. and Jeanne K. Twigg

vs.

Case No. 99-00711

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.  
Robert L. Shangraw

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**REPRESENTATION OF PARTIES**

Claimants, Russell W. and Jeanne K. Twigg, hereinafter collectively referred to as "Claimants":  
Foster S. Goldman, Jr., Esq., Markel, Schafer & Goldman, Pittsburgh, Pennsylvania

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill") and Robert L.  
Shangraw ("Shangraw"), hereinafter collectively referred to as "Respondents": William E.  
Mahoney, Jr., Esq., Stradley Ronon Stevens & Young, Philadelphia, Pennsylvania

**CASE INFORMATION**

Statement of Claim filed on or about: February 17, 1999  
Claimants signed the Uniform Submission Agreement: February 5, 1999

Statement of Answer filed by Respondents on or about: April 13, 1999  
Respondent Merrill signed the Uniform Submission Agreement: April 9, 1999  
Respondent Shangraw signed the Uniform Submission Agreement: May 13, 1999

**CASE SUMMARY**

Claimants asserted the following causes of action: Violation of Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder; misrepresentations and omissions of material fact; common law fraud; breach of fiduciary duty; breach of written contract; and negligence. The causes of action relate to the purchase of Dura Pharmaceuticals, Inc.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: a failure to state a claim upon which relief may be granted; Claimant's failure to timely object to any of the transactions of which he complains constitutes a ratification of these transactions and a waiver or estoppel of Claimant's right to any recovery sought in the Statement of Claim; and a failure to mitigate their damages.

### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages \$306,771.00  
Claimants also requested punitive damages, attorney's fees and the costs of the arbitration.

Respondents requested that the Statement of Claim be denied in all respects and that they be compensated for their costs, including attorneys' fees, in defending against these claims.

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

The Panel considered Claimants' Motion to Amend the Statement of Claim to include claims of negligence, and Respondents' Response thereto, and granted the Motion.

The Panel also considered Respondents' Motion to Dismiss and Claimants' Response and denied the Motion.

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; the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent Merrill is liable to and shall pay to Claimants \$150,000.00; and
2. That claims against Shangraw are denied; and
3. That each party shall bear their own costs and expenses, including attorneys' fees, with the exception of forum fees as specified below; and
4. That any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$200.00

### 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. In this matter, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

### Forum Fees and Assessments

The 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:

1 Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conference: August 16, 1999 1 session	
5 Hearing sessions x \$750.00	= <u>\$3,750.00</u>
Hearing Date(s): December 15, 1999 2 sessions	
December 16, 1999 2 sessions	
December 17, 1999 1 session	
Total Forum Fees	= \$4,500.00

The Panel assessed \$4,500. of the forum fees to Merrill.

### Fee Summary

Claimants be and hereby are liable for:

Initial Filing Fee	= \$200.00
Total Fees	= <u>\$200.00</u>
Less payments	= <u>\$950.00</u>
Refund to Claimants	= \$750.00

Respondent, Merrill, be and hereby is solely liable for:

Member Fees	= \$4,600.00
Forum Fees	= <u>\$4,500.00</u>
Total Fees	= <u>\$9,100.00</u>
Less payments	= <u>\$4,600.00</u>
Balance Due NASD Regulation, Inc.	= \$4,500.00

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**

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Thomas J. Schuchert, Esq.  
Public Arbitrator, Presiding Chair

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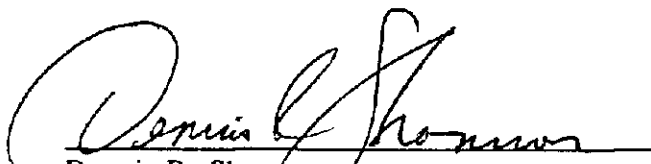
Date signed

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James G. Park, Esq.  
Public Arbitrator

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Date signed



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Dennis R. Shannon  
Industry Arbitrator

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12/27/99  
Date signed

January 5, 2000  
Date of Service (For NASD office use only)

**Concurring Arbitrators' Signatures**

Thomas J. Schuchert  
Thomas J. Schuchert, Esq.  
Public Arbitrator, Presiding Chair

December 31, 1999  
Date signed

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James G. Park, Esq.  
Public Arbitrator

\_\_\_\_\_  
Date signed

\_\_\_\_\_  
Dennis R. Shannon  
Industry Arbitrator

\_\_\_\_\_  
Date signed

January 5, 2000  
Date of Service (For NASD office use only)

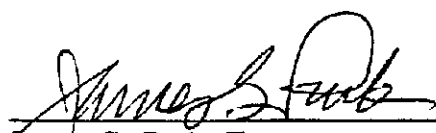
**Concurring Arbitrators' Signatures**

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Thomas J. Schuchert, Esq.  
Public Arbitrator, Presiding Chair

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Date signed



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James G. Park, Esq.  
Public Arbitrator

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12/24/99  
Date signed

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Dennis R. Shannon  
Industry Arbitrator

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Date signed

January 5, 2000  
Date of Service (For NASD office use only)