

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Art and Beatrice Zaras, Art Zaras IRA, and Beatrice Zaras IRA, Claimants v. Merrill Lynch,  
Pierce, Fenner & Smith, Inc., Jeffrey Lavner, and Christopher Dyrek, Respondents

Case Number: 99-04802

Hearing Site: San Diego, California

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**REPRESENTATION OF PARTIES**

For Claimants:

Matthew R. Rutherford, Esq.  
Law Offices of Matthew R.  
Rutherford  
San Diego, California

For Respondents:

Todd A. Zuckerbrod, Esq.  
Merrill, Lynch, Pierce, Fenner &  
Smith, Inc.  
New York, New York

**CASE INFORMATION**

Statement of Claim filed: October 22, 1999

Claimant Art Zaras' Uniform Submission Agreement signed: October 21, 1999

Claimant Beatrice Zaras' Uniform Submission Agreement signed: October 21, 1999

Joint Statement of Answer filed by Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc.,  
Jeffrey Lavner and Christopher Dyrek: January 26, 2000

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement  
signed: January 25, 2000

Respondent Jeffrey Lavner's Uniform Submission Agreement signed: January 25, 2000

Respondent Christopher Dyrek's Uniform Submission Agreement signed: December 29, 1999

### **CASE SUMMARY**

Claimants alleged unsuitability, fraud, breach of fiduciary duty, and a failure to supervise. The claim involved the purchase and/or sale of securities in Sun Healthcare Group, Inc. and Retirement Care Associates, Inc.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested \$360,000.00 in compensatory damages, \$77,000.00 in disgorgement of commissions and margin interest, \$900,000.00 in punitive damages, and \$300,000.00 in damages for emotional distress. Claimants also sought reimbursement for lost opportunity, interest, attorney's fees, and costs of arbitration.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety.

### **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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. is liable to and shall pay Claimants \$25,162.00 in compensatory damages.
- 2) Respondent Jeffrey Lavner is liable to and shall pay Claimants \$3,145.00 in compensatory damages.
- 3) Respondent Chris Dyrek is liable to and shall pay Claimants \$3,145.00 in compensatory damages.
- 4) Respondents are jointly and severally liable to and shall pay Claimants \$500.00 for reimbursement of the filing fee.
- 5) Each party shall bear its own costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 500.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the event of the dispute. Accordingly, the member firm is a party Merrill Lynch, Pierce, Fenner & Smith, Inc. and the following fees are assessed:

Member Surcharge	= \$ 2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 4,500.00
Total Member Fees	= \$ 7,600.00

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session	= \$ 900.00
Pre-hearing conferences:	
August 18, 2000	1 session
November 3, 2000	1 session

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference:	
June 16, 2000	1 session

(12) Hearing sessions @ \$1,200.00/session	= \$ 14,400.00
Hearings:	
November 29, 2000	2 sessions
November 30, 2000	2 sessions
December 1, 2000	2 sessions
December 4, 2000	2 sessions
December 5, 2000	2 sessions
December 6, 2000	2 sessions

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Total Forum Fees	= \$ 16,500.00
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1. The Panel assessed \$ 8,250.00 of the forum fees jointly and severally to Claimants Art & Beatrice Zaras, Art Zaras, IRA, and Beatrice Zaras, IRA.
2. The Panel assessed \$ 8,250.00 of the forum fees jointly and severally to Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc., Jeffrey Lavner and Chris Dyrek.

**Fee Summary**

1. Claimants Art & Beatrice Zaras, Art Zaras, IRA, and Beatrice Zaras, IRA are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 8,250.00
Total Fees	= \$ 8,750.00
Less Payments	= \$ (1,700.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 7,050.00

2. Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. is charged with the following fees and costs:

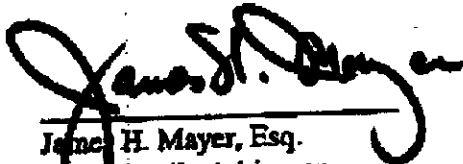
Member Fees	= \$ 7,600.00
Less Payments	= \$(7,600.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc., Jeffrey Lavner and Chris Dyrek are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 8,250.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,250.00

All balances are payable to NASD Dispute Resolution, Inc. and are due within 30 days of the Award's date of service.

Concurring Arbitrators' Signatures

  
James H. Mayer, Esq.  
Chair, Public Arbitrator

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Paul J. Sipe  
Public Arbitrator

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Milton C. Bennett  
Non-Public Arbitrator

December 14, 2000  
Signature Date

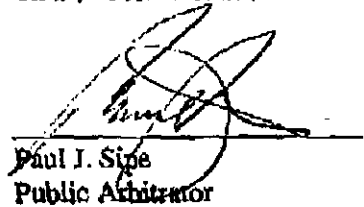
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December 19, 2000  
Date of Service

Concurring Arbitrators' Signatures

James H. Mayer, Esq.  
Chair, Public Arbitrator

  
Paul J. Sipe  
Public Arbitrator

Milton C. Bennett  
Non-Public Arbitrator

Signature Date

12-19-00  
Signature Date

Signature Date

Date of Service

**Concurring Arbitrators' Signatures**

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James H. Mayer, Esq.  
Chair, Public Arbitrator

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Signature Date

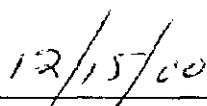
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Paul J. Sipe  
Public Arbitrator

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Signature Date

  
Milton C. Bennett  
Non-Public Arbitrator

  
Signature Date

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Date of Service