

THE DOG ATE IT

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Merrill Lynch, Morgan Stanley and Citicorp agreed to pay \$250,000 each for failing to comply with orders for them to produce documents in 20 arbitration cases. This is the largest arbitration related fine ever levied by the NASD. This is another example of how the deck is stacked against the investor when taking on the big firms. Do you honestly think that these firms actually lost the documents that were required? Maybe I could believe that they were lost in a paper shredder somewhere, but most certainly the firms' dog did not eat them. While we are on the subject of ridiculous, let's discuss those fines. A \$250,000 fine is literally the equivalent of an individual who makes \$100,000 a year paying out 25 cents. What kind of message does it send when brokerage firms are able to hide evidence in multi-million dollar arbitration cases and only be fined a pittance?

It gets worse. John J. Mack, a former NASD arbitrator, in an interview in the *Wall Street Journal* stated that many arbitrators are "blackballed" if they rule against the big brokerage firms.

"The word on the street is if you rule against the brokerage houses, you will be removed from the list." The NASD did respond to Mr. Mack's allegations, stating that the organization never cites reasons for an arbitrator's removal. Of course they don't. The NASD is a self-regulatory body that exists at the pleasure of its members. Who are its members? Brokerage firms.

NASD rules state that all firms must cooperate fully in the voluntary exchange of all pertinent documents and other information with plaintiffs. Brokerage firms now feel that noncompliance is an acceptable legal strategy. Essentially, "The dog ate my homework" is now a legal defense. The simple fact that these firms still have customers is an enigma that haunts us daily.