

**Stipulated Award  
NASD Regulation, Inc.**

In the Matter of the Arbitration Between:

Kenneth E. Lang, Claimant v. Murphy & Durieu, Kimberly Misuraca and  
Steven Cavagnaro, Respondents

Case Number 00-00895

**REPRESENTATIVES OF PARTIES**

For Claimant, Kenneth Lang:

Charles S. Ferguson  
Seattle, Washington

For Respondent, Murphy & Durieu and  
Steven Cavagnaro

James E. Nealon  
Kelley Drye & Warren  
LLP  
New York, New York

For Respondent, Kimberly Misuraca

Charles M. O'Rourke  
Woodbury, New York

**CASE INFORMATION**

Statement of Claim filed: March 6, 2000.

Claimant's Uniform Submission Agreement signed: March 3, 2000.

Statement of Answer filed by Respondents Murphy & Durieu and Steven  
Cavagnaro: June 29, 2000.

Statement of Answer filed by Respondent Kimberly Misuraca: August  
11, 2000.

Hearing on Statement of Claim commenced: June 4, 2001.

Claimant stipulated on the record to the dismissal with prejudice  
of the arbitration and all claims therein against Respondents and  
to an award directing expungement of this matter (and any reference  
thereto) from Respondents Murphy & Durieu's, Steven Cavagnaro's and  
Kimberly Misuraca's, registration records maintained by the Central  
Registration Depository ("CRD"): June 4, 2001.

**CASE SUMMARY**

Claimant alleged that Murphy & Durieu, Steven Cavagnaro and  
Kimberly Misuraca were liable to him for damages because of  
violation of NASD suitability rule, violation of an agent's duties

to their principal, and the undisclosed and unauthorized use of a margin account.

All respondents denied the allegations.

#### **RELIEF REQUESTED**

Claimant requested: An award in the approximate amount of \$120,000.00 for lost principal, margin interest, with interest at the highest legal rate from April 29, 1999 to the date of the award.

All respondents requested dismissal of the Claimant's Claim in its entirety, attorneys' fees and costs. Respondents further requested expungement of any reference of this dispute from all respondents records.

#### **DISMISSAL BY STIPULATION**

All parties to the arbitration stipulated on the record to the dismissal with prejudice of all claims at issue in this proceeding, the entry of an award in this arbitration directing expungement of any reference to this dispute, complaint and/or Arbitration in respondent's CRD records, and that each party to the stipulation will bear its own costs and expenses incurred in this matter, including attorneys' fees.

#### **STIPULATED AWARD**

1. All claims brought against respondents Murphy & Durieu and Steven Cavagnaro and Kimberly Misuraca are hereby dismissed with prejudice from this arbitration;
2. The Panel recommends the expungement of all references to the above-captioned arbitration, and/or any complaint or dispute involving Kenneth E. Lang and Steven Cavagnaro and Kimberly Misuraca from respondents Murphy & Durieu's, Steven Cavagnaro's and respondent Kimberly Misuraca's registration record maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Cavagnaro and Misuraca must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
3. All parties shall bear their own costs and expenses, including attorneys' fees, incurred in this matter.
4. This arbitration is dismissed with prejudice, subject to the panel retaining jurisdiction to insure that the agreed settlement amounts are paid by the respondents. Claimant will notify the panel when payment has been received.

## **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

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

Initial claim filing fee = \$300.00

### **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 Murphy & Durieu is a party/Respondent and the following fees are assessed:

Member Surcharge	= \$1,500
Pre-Hearing process fee	= \$ 800
Hearing process fee	= \$2,500

### **Forum Fees and Assessments**

The Arbitrator/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:

1 Pre-hearing conference session(s) with a single arbitrator @ \$450	= \$450
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Pre-hearing conference(s): June 1, 01 1 session

2 Pre-hearing conference session(s) with the Panel @ \$1125	= \$2250
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Pre-hearing conference(s): 12/14/00, 1/17/01, 3 session

1 Post-hearing conference session with the Panel @ \$1125	= \$1125
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Post-hearing conference(s): 6/13/02

1 Hearing Sessions @ \$1125	= \$1125
Hearing(s): June 4, 00 1 session(s)	

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<b>Total Forum Fees</b>	<b>= \$4950</b>
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1. The Arbitration Panel assessed \$2,475.00 of the forum fees to claimant.

2. The Arbitration Panel assessed \$2,475.00 of the forum fees Jointly and severally to Respondents

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### FEE SUMMARY

1. Claimant, Kenneth Lang, is charged with the following fees and costs:

Initial Filing Fee	= \$ 300
Forum Fees	= \$2,475
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Total Fees	= \$2,775
Less Payments	= \$2,212.50
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Balance Due NASD Regulation, Inc.	= \$ 562.50

2. Respondent, Murphy & Durieu, is charged with the following fees and costs:

Member Fees	= \$4,600
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Total Fees	= \$4,600
Less Payments	= \$4,600
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Balance Due NASD Regulation, Inc.	= \$0

3. Respondents, Steven Cavagnaro, Kimberly Misuraca and Murphy & Durieu, are charged jointly and severally with the following fees and costs:

	= \$2,475.00
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Balance Due NASD Regulation, Inc.	= \$2,475.00

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

### Arbitrator's Signatures

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KATHERINE HENDRICKS, CHAIR

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
CURT HEINLINE

\_\_\_\_\_  
Signature Date

JAMES R. PHIPPARD

Signature Date

Service Date

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### Arbitrator's Signatures

Katherine Hendricks  
KATHERINE HENDRICKS, CHAIR

Aug 21, 2002  
Signature Date

Curt Heinline  
CURT HEINLINE

                      
Signature Date

  
JAMES R. PHIBBARD

00-00895

8-23-02  
Signature Date

8-21-02  
Service Date