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## **Stipulated Award**

### **NASD**

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In the Matter of the Arbitration Between:

Names of the Claimants

Gideon Azari and Karen Azari

Case Number:

00-05314

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc. and Mark R. Jernigan

Hearing Site:

Boca Raton, FL

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### **REPRESENTATION OF PARTIES**

For Gideon Azari and Karen Azari, hereinafter collectively referred to as "Claimants": Darren C. Blum, Esq., Law Offices of Darren C. Blum, P.A., Plantation, FL.

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Mark R. Jernigan ("Jernigan"), hereinafter collectively referred to as "Respondents": Bennett Falk, Esq. and Alexander T. Sarafoglu, Esq., Morgan, Lewis & Bockius, LLP, Miami, FL.

### **CASE INFORMATION**

Statement of Claim filed on or about: November 30, 2000.

Claimants signed the Uniform Submission Agreement: November 21, 2000.

Statement of Answer and Motion for Expungement of Respondent Jernigan's Record filed by Respondents on or about: February 7, 2001.

Respondent Merrill Lynch signed the Uniform Submission Agreement: February 5, 2001.

Respondent Jernigan did not file an executed Uniform Submission Agreement.

Response to Respondents' Motion for Expungement of Respondent Jernigan's Record filed by Claimants on or about: February 8, 2001.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; breach of contract; common law fraud; unsuitability; negligence; negligent supervision; and violations of Section 517, Florida Statutes. The causes of action relate to the unauthorized liquidation of unspecified securities in Claimants' account.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim, and asserted that all transactions handled on behalf of Claimants were authorized by Claimants, any liquidations were appropriate and any purported losses were caused by Claimants, and not by Respondents' conduct.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$150,000.00, plus interest at the legal rate from

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the date of purchase or reasonable market return, rescission, reasonable attorney's fees, punitive damages, and the costs of this proceeding. Alternatively, Claimants requested that Respondents restore to the account all of the shares of stock that Respondents sold without authorization, and for such other relief as is just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that all forum fees and costs be assessed against Claimants.

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

Respondent Jernigan did not file with NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code"), and having answered the claim, is bound by the determination of the undersigned arbitrators (the "Panel") on all issues submitted.

On or about April 16, 2002, the parties filed with NASD a proposed Stipulated Award, which stated that the parties have amicably resolved this matter.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed in its entirety without any finding of fault or liability on the part of Respondents.
2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Jernigan's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Jernigan must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The parties shall bear their respective costs, including attorney's fees.
4. All other requests for relief, which are not addressed specifically in this Award, are denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

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**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 persons at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is assessed:

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

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

January 22-24, 2002, adjournment requested by Respondents = \$ 1,125.00

1. The Panel has assessed \$ 562.50 of the adjournment fee jointly and severally to Claimants.
2. The Panel has assessed \$ 562.50 of the adjournment fee to Respondent Merrill Lynch.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

Injunctive relief fees were not assessed in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the Panel, including a pre-hearing conference with the Panel, that lasts four (4) hours or less. Fees associated with these proceedings are:

Pre-hearing session with the Panel @ \$ 1,125.00	= \$ 1,125.00
Pre-hearing conference: June 5, 2001 1 session	

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Total Forum Fees	= \$ 1,125.00
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1. The Panel has assessed \$ 562.50 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 562.50 of the forum fees to Respondent Merrill Lynch.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

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Administrative costs were not incurred in this matter.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fees	= \$ 562.50
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 1,425.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD	= \$ 0.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 4,600.00
Adjournment Fees	= \$ 562.50
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 5,725.00
<u>Less payments</u>	= \$ 3,100.00
Balance Due NASD	= \$ 2,625.00

All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Luz Ivette Rivera, Esq.	-	Public, Presiding Chairperson
William J. Callahan, CPA	-	Public Arbitrator
Alfred P. Reeves, III	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

07/29/02

Luz Ivette Rivera, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

07/23/02

William J. Callahan, CPA  
Public Arbitrator

Signature Date

/s/

07/23/02

Alfred P. Reeves, III  
Non-Public Arbitrator

Signature Date

7/29/02

Date of Service (For NASD office use only)

NASD

Arbitration No. 00-05314

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Luz Ivette Rivera, Esq.

William J. Callahan, CPA

Alfred P. Reeves, III

Public, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Luz Ivette Rivera, Esq.

Public Arbitrator, Presiding Chairperson

Signature Date

William J. Callahan, CPA

Public Arbitrator

Signature Date



Alfred P. Reeves, III

Non-Public Arbitrator

July 23, 2002

Signature Date

Date of Service (For NASD office use only)

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**ARBITRATION PANEL**

Luz Ivette Rivera, Esq.

William J. Callahan, CPA

Alfred P. Reeves, III

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Public, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Luz Ivette Rivera, Esq.

Public Arbitrator, Presiding Chairperson

July 29, 2002  
Signature Date

William J. Callahan, CPA

Public Arbitrator

Signature Date

Alfred P. Reeves, III

Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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William J. Callahan, CPA	-	Public Arbitrator
Alfred P. Reeves, III	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Luz Ivette Rivera, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
William J. Callahan, CPA  
Public Arbitrator

7/23/02  
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Signature Date

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