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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Case Number: 01-00097

Names of the Respondents

Israel Kaganas and Zulma Noemi Kaganas, JTWROS

Hearing Site: Boca Raton, Florida

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**REPRESENTATION OF PARTIES**

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Claimant": Bennett Falk, Esq. and Alexander Sarafoglu, Esq., Morgan, Lewis & Bockius, LLP, Miami, Florida.

For Israel Kaganas ("I. Kaganas") and Zulma Noemi Kaganas ("Z. Kaganas"), JTWROS, hereinafter collectively referred to as "Respondents": Lonnie K. Martens, Esq., The Martens Law Firm, Tequesta, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 8, 2001.

Claimant signed the Uniform Submission Agreement: January 8, 2001.

Statement of Answer and Counterclaim filed by Respondents on or about: April 9, 2001.

Respondents signed the Uniform Submission Agreement. March 15, 2001.

Reply to Counterclaim filed by Claimant on or about: June 4, 2001.

**CASE SUMMARY**

Claimant asserted the cause of action of breach of contract. The cause of action relates to an unsecured debit balance in Respondents' account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In addition, Respondents filed a counterclaim asserting negligence on the part of the Claimant.

Unless specifically admitted in its Reply to Counterclaim, Claimant denied the allegations made in the counterclaim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$358,150.00, pre-judgment interest, attorney's fees, costs and forum fees. In addition, Claimant requested that the counterclaim be dismissed in its entirety.

Respondents requested that the Statement of Claim be dismissed in its entirety plus, in its counterclaim, Respondents requested compensatory damages in an amount not less than \$2,508,061.00, pre-judgment interest and damages for lost use of assets, and costs.

**OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten Award may be entered.

**AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents are found not liable on all claims.
- 2) Claimant is found not liable on all counterclaims.
- 3) Respondents are jointly and severally liable and shall reimburse Claimant the NASD filing fee in the amount of \$1,000.00.
- 4) Any and all claims for relief not specifically addressed herein, including Claimant's request for attorney's fees, are denied.

**FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$1,000.00
Counterclaim filing fee	= \$ 500.00

**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. Accordingly, Claimant is a party to this dispute and was a member of the NASD at the time the following fees were assessed:

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

**Adjournment Fees**

No requests for adjournments were filed in this matter.

**Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$1,200.00

Pre-hearing conference: February 8, 2002 1 session

Six (6) Hearing sessions @ \$1,200.00 = \$7,200.00

Hearing Dates: March 12, 2003 2 sessions

March 13, 2003 2 sessions

March 28, 2003 2 sessions

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Total Forum Fees = \$8,400.00

The Panel has assessed the total forum fees of \$8,400.00 to Respondents, jointly and severally.

**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.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee = \$1,000.00

Member Fees = \$6,600.00

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Total Fees = \$7,600.00

Less payments = \$6,725.00

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Balance Due NASD = \$ 875.00

Respondents are jointly and severally liable for:

Counterclaim Filing Fee = \$ 500.00

Forum Fees = \$ 8,400.00

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Total Fees = \$ 8,900.00

Less payments = \$ 1,800.00

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Balance Due NASD = \$ 7,100.00

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

NASD

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**ARBITRATION PANEL**

*Kalman J. Lester, CLU*

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*Public Arbitrator, Presiding Chairperson*

*Stuart Alan, MBA*

-

*Public Arbitrator*

*Terrence L. Donoghue*

-

*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

/s/

Kalman J. Lester, CLU

Public Arbitrator, Presiding Chairperson

4/3/03

Signature Date

/s/

Stuart Alan, MBA

Public Arbitrator

4/3/03

Signature Date

**Concurring in Part and Dissenting in Part Arbitrator's Signature**

Arbitrator Donoghue concurs with the Panel's finding of no liability on the counterclaim but dissents with respect to the Panel's finding of no liability on Claimant's claim. Arbitrator Donoghue concurs in all other respects.

/s/

Terrence L. Donoghue

Non-Public Arbitrator

4/4/03

Signature Date

4/4/03

Date of Service (For NASD use only)

NASD

Arbitration No.01-00097

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ARBITRATION PANEL

*Kalman J. Lester, CLU*

*Stuart Alan, MBA*

*Terrence L. Donoghue*

- *Public Arbitrator, Presiding Chairperson*  
- *Public Arbitrator*  
- *Non-Public Arbitrator*

Concurring Arbitrators' Signatures

*Kalman J. Lester*

Kalman J. Lester, CLU

Public Arbitrator, Presiding Chairperson

04/03/2003

Signature Date

Stuart Alan, MBA

Public Arbitrator

Signature Date

Concurring in Part and Dissenting in Part Arbitrator's Signature

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Terrence L. Donoghue

Non-Public Arbitrator

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*Stuart Alan, MBA*

*Terrence L. Donoghue*

*Public Arbitrator, Presiding Chairperson*

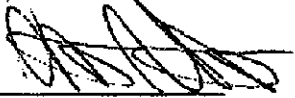
*Public Arbitrator*

*Non-Public Arbitrator*

Concurring Arbitrators' Signatures

Kalman J. Lester, CLU

Public Arbitrator, Presiding Chairperson



Stuart Alan, MBA

Public Arbitrator

Signature Date

4-3-03

Signature Date

Concurring in Part and Dissenting in Part Arbitrator's Signature

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Terrence L. Donoghue

Non-Public Arbitrator

Signature Date

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Apr. 3. 2003 3:51PM NASD

No. 9196 P. 5

NASD

Arbitration No. 01-00097

Award Page 4ARBITRATION PANEL*Kalman J. Lester, CLU**Stuart Alan, MBA**Terrence L. Donoghue**- Public Arbitrator, Presiding Chairperson**- Public Arbitrator**- Non-Public Arbitrator*Concurring Arbitrators' SignaturesKalman J. Lester, CLU


Public Arbitrator, Presiding Chairperson

Signature DateStuart Alan, MBA

Public Arbitrator

Signature DateConcurring in Part and Dissenting in Part Arbitrator's Signature

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Terrence L. Donoghue

Non-Public Arbitrator

4-4-03  
Signature DateDate of Service (For NASD use only)