

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 02-05754

Eunice J. Consalus Trust

Name of the Respondent

Hearing Site: Richmond, Virginia

Merrill Lynch Pierce Fenner & Smith, Inc.

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REPRESENTATION OF PARTIES

Claimant Eunice J. Consalus Trust, hereinafter referred to as "Claimant", was represented by Jan G. Ankrum, Trustee, West Point, Virginia.

Respondent Merrill Lynch Pierce Fenner & Smith, Inc., hereinafter referred to as "Respondent", was represented by April M. Chung, Esq., Theodore A. Krebsbach & Associates, P.C., New York, New York.

CASE INFORMATION

Statement of Claim filed on September 24, 2002.

Claimant signed the Uniform Submission Agreement on September 24, 2002.

Statement of Answer and Motion to Dismiss filed by Respondent on November 26, 2002.

A representative of Respondent executed the Uniform Submission Agreement on October 16, 2002.

Claimant filed a Motion to Preclude and Response to the Motion to Dismiss on January 7, 2003.

Respondent filed a Response to the Motion to Preclude on June 26, 2003.

Claimant filed a Reply to Respondent's Response to the Motion to Preclude on July 7, 2003.

Claimant filed a response to the July 30, 2003 Panel Order on August 11, 2003.

Respondent filed a response to the July 30, 2003 Panel Order on August 18, 2003.

Claimant filed a response to the August 26, 2003 Panel Order on September 4, 2003.

CASE SUMMARY

Claimant asserted the following causes of action, among others: breach of contract; negligence; failure to supervise; breach of fiduciary duty; fraudulent misrepresentation; and, unauthorized trades. The causes of action relate to RIC stock, Proctor & Gamble stock, and various other unspecified securities.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; estoppel; waiver; Claimant lacks standing; Respondent acted in good faith; statutes of limitation; failure to mitigate; and, failure to allege facts to support a claim for punitive damages.

#### RELIEF REQUESTED

Claimant in its Statement of Claim requested:

Compensatory Damages	\$ 325,240.00
Punitive Damages	\$3,252,400.00
Other Costs	amount unspecified
Rescission	
Other Specific Performance	

Respondent in its Statement of Answer requested that the Statement of Claim be dismissed with prejudice; that Respondent's motion to dismiss be granted; and, that Respondent be awarded such other and further relief as is just and proper.

#### OTHER ISSUES CONSIDERED AND DECIDED

By Order dated July 30, 2003, the Panel denied Claimant's Motion to Preclude.

Also by Order dated July 30, 2003, the Panel requested additional information regarding the motion to dismiss. The parties were ordered to submit the "step by step succession (sic) between the Bain Trust, which Merrill Lynch admits had an account, and the Consalus Trust."

By Order dated August 26, 2003, the Panel stated as follows:

The panel of Arbitrators meet (sic) today after reviewing the requested material submitted by the Claimant and the Respondent to review Respondent's motion to "Dismiss" Claimant's claim because it has no authority or standing to assert the claims in the Statement of Claim.

In September, 2001, the Bain Trust Accounts were transferred to BB&T Trust Company of Virginia. The panel can not find any connection or documentation of any connection to the Bain Trust Accounts with the Eunice J. Consalus Trust and therefore would be inclined to grant the Respondents motion to dismiss. However we would allow Claimant to amend its claim to include a party that does have a connection, or if Claimant can show a direct connection to the Bain Trust Accounts we would not grant Respondent's motion to dismiss.

We would like Claimant's specific response within seven days from Claimant's receipt of this request.

### AWARD

After considering the pleadings and the record in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondent are dismissed with prejudice;
2. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

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

Initial claim filing fee	= \$ 600.00
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00
Total Member Fees	= \$8,550.00

#### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), 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: June 10, 2003 1 session	

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Total Forum Fees	= \$1,200.00
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1. The Panel has assessed \$600.00 of the forum fees to Claimant.
2. The Panel has assessed \$600.00 of the forum fees to Respondent.

FEE SUMMARY

1. Claimant is assessed the following fees:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 600.00
Total Fees	= \$1,200.00
Less payments	= \$1,800.00
Refund Owed Claimant	= \$ 600.00

2. Respondent is assessed the following fees:

Member Fees	= \$8,550.00
Forum Fees	= \$ 600.00
Total Fees	= \$9,150.00
Less payments	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 600.00

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

ARBITRATION PANEL

Donald B. Vaden, Esq.	-	Public Arbitrator, Presiding Chairperson
Albert D. Sturtevant, Esq.	-	Public Arbitrator, Panelist
Keith A. Green	-	Non-Public Arbitrator, Panelist

Shirley A. Adams

Oct 9, 2003

**Signature Date**

**Signature Date**

October 14, 2003  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Donald B. Vaden, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Albert D. Sautevant, Esq.

Albert D. Sautevant, Esq.  
Public Arbitrator, Panelist

10/10/03  
Signature Date

Keith A. Green  
Non-Public Arbitrator, Panelist

Signature Date

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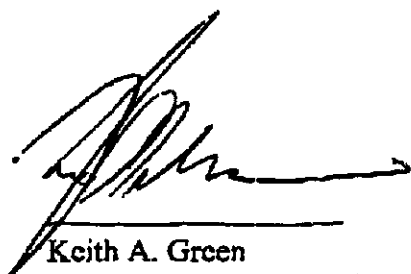
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Donald B. Vaden, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

\_\_\_\_\_  
Albert D. Sturtevant, Esq.  
Public Arbitrator, Panelist

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Keith A. Green

Non-Public Arbitrator, Panelist

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