

**STIPULATED AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number. 02-06363

Edward F. and Georgianne K. Kash,  
Georgianne K. Kash and Edward F. Kash,  
Trustees, U/A Dated 11/1/98, and  
Georgianne K. Kash, Trustee U/A Dated  
11/21/98

Names of the Respondents

Hearing Site: Tampa, Florida

Merrill Lynch, Pierce, Fenner & Smith, Inc. and  
Eric A. Klaus

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Edward F. and Georgianne K. Kash, Georgianne K. Kash and Edward F. Kash, Trustees, U/A Dated 11/1/98, and Georgianne K. Kash, Trustee U/A Dated 11/21/98, hereinafter referred to as "Claimants": Emily Peacock, Esq., James, Hoyer, Newcomer & Smiljanich, P.A., Tampa, Florida.

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Eric A. Klaus ("Klaus"), hereinafter referred to as "Respondents": Keith Olin, Esq. and Julie Russo, Esq., Morgan Lewis & Bockius, LLP, Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: December 2002.

Claimants signed the Uniform Submission Agreement: November 20, 2002.

Amended Statement of Claim filed on or about: April 7, 2003.

Second Amended Statement of Claim filed on or about: May 1, 2003.

Statement of Answer filed by Respondents on or about: January 30, 2003.

Amended Statement of Answer filed by Respondents on or about: April 21, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: December 13, 2002.

Respondent Klaus signed the Uniform Submission Agreement: January 30, 2003.

### **CASE SUMMARY**

Claimants alleged that Respondents recommended unsuitable investments that were too risky for retirees with conservative investment objectives and that Claimants sustained losses in their account as a result of Respondents' recommendations. Claimants contended that Respondents violated Florida securities laws and common law. The causes of action relate to Claimants' investments in shares of Peoples Energy Corp. and other unspecified securities products.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and contended that the recommendations made to Claimants were part of a comprehensive asset allocation plan entirely consistent with Claimants' stated investment objectives and risk tolerance.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of at least \$200,000.00 including, but not limited to, rescissory damages and all legal interest due and accruing on such damages under the Florida Securities Act, punitive damages, costs of this action, including all fees and expenses of expert witnesses and such other relief as the Panel deemed appropriate under the circumstances.

Respondents requested that the Arbitrators dismiss the Statement of Claim in its entirety, assess all fees and costs against Claimants and grant such other and further relief as the Panel deemed just and proper.

### **ISSUES CONSIDERED AND DECIDED**

The Parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

On or about August 28, 2003, Claimants informed NASD Dispute Resolution they were dismissing their claims, with prejudice, against Respondent Klaus.

On or about September 23, 2003, the parties advised NASD Dispute Resolution the case was in the process of being amicably resolved between the parties and that the amicable resolution involved the submission of a stipulated arbitration award.

On or about October 13, 2003, the parties submitted a proposed Stipulated Award for entry by the arbitrators.

### **AWARD**

After considering the pleadings and having been apprised of the parties' amicable resolution of this matter and joint request that the Panel enter this 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 Merrill Lynch or Klaus.

2. Based upon Claimants' representation that after discovery, Claimants determined that Respondent Klaus had not done anything wrong and based upon the joint request of the parties, the Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Klaus' 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 Klaus must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. Each party shall bear its respective costs, including attorneys' fees.

4. All other requests for relief, which are not addressed specifically in this Stipulated Award, are denied with prejudice.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. 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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$2,750.00

#### **Adjournment Fees**

No adjournments were granted during these proceedings for which fees were assessed.

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing 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 Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: May 13, 2003	1 session

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Total Forum Fees:	= \$1,125.00
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Pursuant to the agreement of the parties, the Panel has assessed one-half, or \$562.50 of the forum fees to Claimants, jointly and severally, and one-half, or \$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 are 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**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$562.50

Total Fees	= \$862.50
Less payments	= \$862.50

Balance Due NASD Dispute Resolution	= \$0.00
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Respondent Merrill Lynch is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$562.50

Total Fees	= \$5,762.50
Less payments	= \$5,200.00

Balance Due NASD Dispute Resolution	= \$562.50
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**ARBITRATION PANEL**

Richard Lee Ashton	Public Arbitrator, Presiding Chair
Geoffrey Paul Nuckolls, CPA	Public Arbitrator
David D. Cohen	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
Richard Lee Ashton  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/S/\_\_\_\_\_  
Geoffrey Paul Nuckolls, CPA  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
David D. Cohen  
Non-Public Arbitrator

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

October 30, 2003  
Date of Service (For NASD Dispute Resolution office use only)

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### ARBITRATION PANEL

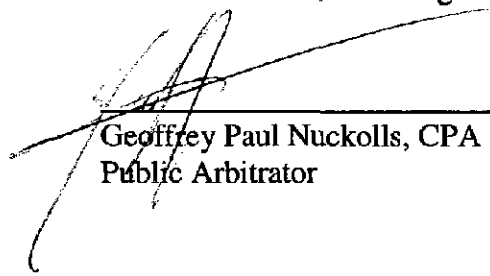
Richard Lee Ashton  
Geoffrey Paul Nuckolls, CPA  
David D. Cohen

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

### Concurring Arbitrators' Signatures

Richard Lee Ashton  
Public Arbitrator, Presiding Chair

Signature Date

  
Geoffrey Paul Nuckolls, CPA  
Public Arbitrator

  
Signature Date

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### ARBITRATION PANEL


Richard Lee Ashton  
Geoffrey Paul Nuckolls, CPA  
David D. Cohen

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

### Concurring Arbitrators' Signatures



Richard Lee Ashton  
Public Arbitrator, Presiding Chair


  
Signature Date

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Geoffrey Paul Nuckolls, CPA  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
David D. Cohen  
Non-Public Arbitrator

10/20/03  
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Signature Date

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Date of Service (For NASD Dispute Resolution office use only)