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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Scott Grady

Case Number: 02-06518

Name of the Respondent  
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Scott Grady ("Grady"), hereinafter referred to as "Claimant": David A. Weintraub, Esq.,  
David A. Weintraub P. A., Ft. Lauderdale, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), hereinafter referred to as  
"Respondent": Keith Olin, Esq., Bressler, Amery & Ross, P. C., Miramar, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: October 30, 2002.  
Claimant signed the Uniform Submission Agreement: October 7, 2002.  
Statement of Answer filed by Respondent on or about: January 30, 2003.  
Respondent signed but did not date the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of Section 10(b) of the Securities Exchange Act of 1934, and the rules promulgated thereunder; violation of Rule 10b-5 of the Securities Exchange Act of 1934; violations under the common law doctrine of respondeat superior and under Section 20(a) of the Securities Exchange Act of 1934; breach of fiduciary duty; negligence; failure to supervise; and, common law fraud. The causes of action relate to the purchases of the Internet Capital Group ("ICGE") stock in Claimant's account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the initial Statement of Claim, Claimant requested compensatory damages in the amount of \$95,000.00 plus interest, punitive damages in the amount of \$250,000.00 and costs. At the evidentiary hearing, Claimant asserted a combined total of actual damages plus prejudgment interest of \$105,688.83 and punitive damages of \$317,065.69.

Respondent requested an award dismissing the Statement of Claim in its entirety and granting such other and further relief as the Panel deemed just and proper, including assessment of all forum fees against Claimant. Respondent reserves its right, and hereby formally notified Claimant of its intent to seek, under Sections 57.105 and 517.211(6) of the Florida Statutes, and in a court of competent jurisdiction, reimbursement of attorneys' fees and costs.

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

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

### **AWARD**

After considering the pleadings and 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:

Respondent is liable for fraud. Respondent shall pay to Claimant compensatory damages in the amount of \$39,500.00 plus interest at the Florida legal rate, accruing from February 22, 2005 until the date of payment of the Award.

Respondent is liable and shall pay to Claimant the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.

Any and all relief not specifically addressed herein, including all statutory claims and Claimant's claims for punitive damages, are denied.

### **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	= \$ 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 person at the time of the events giving rise to the dispute. Accordingly, MLPFS is a member firm and a party.

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

Total Member Fees = \$5,200.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

July 1-2, 2004, adjournment requested by Respondent. = \$1,125.00

The Panel waived the total adjournment fee of \$1,125.00.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

**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.

No injunctive relief fees were incurred 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 1,350.00

Pre-hearing conferences:	May 10, 2004	1 session
	May 17, 2004	1 session
	June 22, 2004	1 session

Four (4) Pre-hearing sessions with Panel @ \$1,125.00/session = \$ 4,500.00

Pre-hearing conferences:	May 13, 2003	1 session
	January 14, 2004	1 session
	June 29, 2004	1 session
	July 8, 2004	1 session

Four (4) Hearing sessions @ \$1,125.00/session = \$ 4,500.00

Hearing Dates:	February 21, 2005	2 sessions
	February 22, 2005	2 sessions

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Total Forum Fees = \$10,350.00

The Panel has assessed the total forum fees of \$10,350.00 to Respondent.

**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 in this matter.

**Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$10,350.00
<u>Total Fees</u>	= \$15,550.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 8,550.00

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

**ARBITRATION PANEL**

Arthur J. Liebell	-	Public Arbitrator, Presiding Chairperson
William J. Callahan, CPA	-	Public Arbitrator
Harry Allen Strunk	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ \_\_\_\_\_  
Arthur J. Liebell  
Public Arbitrator, Presiding Chairperson

February 24, 2005  
Signature Date

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

February 24, 2005  
Signature Date

/s/ \_\_\_\_\_  
Harry Allen Strunk  
Non-Public Arbitrator

February 25, 2005  
Signature Date

February 25, 2005  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 02-06518  
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William J. Callahan, CPA	-	Public Arbitrator
Harry Allen Strunk	-	Non-Public Arbitrator

**Consenting Arbitrators' Signatures**

  
Arthur J. Liebell  
Public Arbitrator, Presiding Chairperson

02/24/05  
Signature Date

William J. Callahan, CPA  
Public Arbitrator

Signature Date

Harry Allen Strunk  
Non-Public Arbitrator

Signature Date

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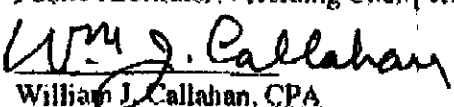
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William J. Callahan, CPA  
Harry Allen Strunk

Public Arbitrator Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Public Arbitrator, Presiding Chairperson  
  
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Public Arbitrator

Signature Date

2/24/05  
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