

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

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In the Matter of the Arbitration Between

Name of Claimant

Carol Ann Aselage

and

Case Number: 02-06547  
Hearing Site: Houston, Texas

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc  
Stephen M. Medina  
The Medina & Medina Group

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**NATURE OF DISPUTE**

Customer v. Member, Associated Person and Non-Member

**REPRESENTATION OF PARTIES**

Carol Ann Aselage ("**Claimant**") was represented by Donald M. Feferman, Esq., of the Law Offices of Donald M. Feferman in Corpus Christi, Texas.

Merrill Lynch Pierce Fenner & Smith, Inc ("**MLPFS**"), Stephen M. Medina ("**Medina**") and The Medina & Medina Group ("**Medina Group**"), hereinafter collectively referred to as "**Respondents**" were represented by Joel R. Sharp, Esq., of Jenkins & Gilchrist in Dallas, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 1, 2002. The Submission Agreement of Claimant Carol Ann Aselage was signed on or about October 28, 2002.

The Amended Statement of Claim was filed on or about October 28, 2003.

The Joint Statement of Answer was filed by Respondent Merrill Lynch Pierce Fenner & Smith, Inc., Stephen M. Medina and the Medina & Medina Group on or about December 24, 2002.

The Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith, Inc was signed on or about December 30, 2002 by Eric M. Rosenberg, First Vice President and Assistant General Counsel.

The Submission Agreement of Respondent Stephen M. Medina was signed on or about December 30, 2002.

There was no Submission Agreement signed by Respondent The Medina & Medina Group.

### **CASE SUMMARY**

Claimant asserted the following causes of action: fraud, securities fraud, deceptive trade practices, breach of fiduciary duty, failure to supervise, negligence and breach of contract. Claimant asserted that the investments made by Respondents were totally inappropriate for retirement funds, there was a complete lack of management and diversification in all of the accounts and unauthorized trading. Respondents invested all of the funds in equities which were high risk, high tech issues. The causes of action relate to the order execution of two retirement accounts (an IRA and a SEP).

Unless specifically admitted in their Answer, Respondents Merrill Lynch Pierce Fenner & Smith, Inc., Stephen M. Medina and The Medina & Medina Group denied the allegations made in the Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	Unspecified
Punitive/Exemplary Damages	Unspecified
Attorney's Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

At the hearing, the Panel allowed Claimant to amend the Statement of Claim, to add unauthorized trading as a cause of action.

Respondent The Medina & Medina Group did not file with the NASD Dispute Resolution a properly executed submission to arbitration but having answered the claim, and appeared and testified at the hearing, is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies. The parties have agreed to receive conformed copies of the award while the original remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

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

- 1.) Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Stephen M. Medina are jointly and severally liable for and shall pay to Claimant, Carol Ann Aselage, the sum of \$43,394 in compensatory damages;
- 2.) Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Stephen M. Medina are jointly and severally liable for and shall reimburse Claimant, Carol Ann Aselage, the sum \$250 for the filing fee paid to NASD Dispute Resolution;
- 3.) All Claims regarding Medina Group are denied and dismissed with prejudice;
- 4.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 5.) That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

## **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 = \$250.00

### **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 event(s) giving rise to the dispute. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge = \$1500.00

Pre-hearing process fee = \$750.00

Hearing process fee = \$2200.00

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 sessions with Panel x \$1000.00 = \$1000.00

Pre-hearing conference: May 6, 2003 1 session

Four (4) Hearing sessions x \$1000.00 = \$4000.00

Hearing Dates: October 28, 2003 2 sessions

October 29, 2003 2 sessions

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Total Forum Fees = \$5000.00

The Arbitration Panel has assessed \$5000.00 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc. and Stephen M. Medina.

### FEE SUMMARY

Claimant, Carol Ann Aselage, is liable for:

Initial Filing Fee	= \$ 250.00
Total Fees	= \$ 250.00
Less payments	= \$ 1250.00
Refund Due to Claimant	= \$ 1000.00

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc, is liable for:

Member Fees	= \$4450.00
Total Fees	= \$4450.00
Less payments	= \$4450.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Stephen M. are jointly and severally liable for:

Forum Fees	= \$5000.00
Total Fees	= \$5000.00
Less payments	= \$2200.00
Balance Due NASD Dispute Resolution	= \$2800.00

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

### ARBITRATION PANEL

Russell E. Rains - Public Arbitrator, Presiding Chair  
Arno C. Schwethelm - Public Arbitrator  
Stanley H. Frank, Jr. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Russell E. Rains  
Russell E. Rains  
Public Arbitrator, Presiding Chair

November 18, 2003  
Signature Date

/s/ Arno C. Schwethelm  
Arno C. Schwethelm  
Public Arbitrator

November 21, 2003  
Signature Date

/s/ Stanley H. Frank, Jr.  
Stanley H. Frank, Jr.  
Non-Public Arbitrator

November 19, 2003  
Signature Date

November 21, 2003  
Date of Service (For NASD office use only)

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Concurring Arbitrators:

  
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Russell E. Rains  
Public Arbitrator, Presiding Chair

11-18-03  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Arno C. Schwethelm  
Public Arbitrator

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

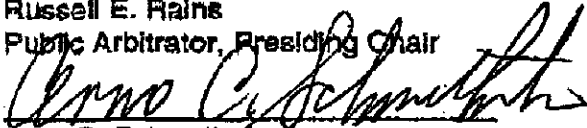
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Stanley H. Frank, Jr.  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

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Concurring Arbitrators:

Russell E. Rains  
Public Arbitrator, Presiding Chair  
  
Arno C. Schwethelm  
Public Arbitrator

Signature Date

11-21-2003

Signature Date

Stanley H. Frank, Jr.  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

Concurring Arbitrators:

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Russell E. Rains  
Public Arbitrator, Presiding Chair

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Signature Date

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Arno C. Schwethelm  
Public Arbitrator

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Signature Date

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Stanley H. Frank, Jr.  
Non-Public Arbitrator

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11/19/03  
Signature Date

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Date of Service (For NASD office use only)