

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

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In the Matter of the Arbitration Between:

Karen S. Lowe (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith Inc. and William Granville Dilley (Respondents)

Case Number: 02-06960

Hearing Site: Columbus, Ohio

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**REPRESENTATION OF PARTIES**

Claimant, Karen S. Lowe, hereinafter referred to as "Claimant": Stephen P. Meyer, Esq., Meyer & Meyer & Ford, Charleston, WV.

Respondents, Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill") and William Granville Dilley ("Dilley") hereinafter collectively referred to as "Respondents": Yosef Sinensky, Esq., Merrill Lynch Pierce Fenner & Smith Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on: November 14, 2002.

Claimant signed the Uniform Submission Agreement: November 14, 2002.

Joint Statement of Answer filed by Respondents on or about: January 14, 2003.

Merrill signed the Uniform Submission Agreement: January 14, 2003.

Dilley signed the Uniform Submission Agreement: January 13, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of Section 10(b) and 20(a) of the securities and exchange act, Rule 10b-5 and various SRO rules, fraud, breach of contract, negligence, breach of fiduciary duty and Respondeat Superior.

Claimant contends that she sustained losses in her account as a result of Respondents' recommendations. Claimant's claim included unspecified securities.

Respondents denied each and every allegation contained in the Statement of Claim.

Respondents further contend that any perceived loss in the account was due to Claimant's withdrawal of funds over the life of the account.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$41,701.11, punitive damages, costs of this action, and reasonable attorneys' fees.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety, to assess all fees and costs against Claimant and that this matter be ordered expunged from Respondent Dilley's registration record.

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

The parties have 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 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 Merrill or Dilley.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Dilley's 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 Dilley must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Each party shall bear its respective costs, including attorneys' fees.
4. Any and all relief not specifically addressed herein, including punitive damages, are 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	= \$175.00
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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, Merrill Lynch, Pierce, Fenner & Smith Inc. is a party.

Member surcharge	= \$875.00
Pre-hearing process fee	= \$750.00

Hearing process fee = \$1,000.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 @ \$600.00 = \$ 600.00  
Pre-hearing conference: May 16, 2003 1 session

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Total Forum Fees = \$ 600.00

1. The Panel has assessed \$300.00 of the forum fees against Claimant.
2. The Panel has assessed \$300.00 of the forum fees against Respondent.

**Fee Summary**

1. Claimant, is solely liable for:


Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 300.00
Total Fees	= \$ 475.00
<u>Less payments</u>	= \$ 750.00
Refund Due Claimant	= \$ 275.00

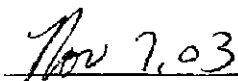
2. Merrill is solely liable for:

Member Fees	= \$ 2,625.00
<u>Forum Fees</u>	= \$ 300.00
Total Fees	= \$ 2,925.00
<u>Less payments</u>	= \$ 2,625.00
Balance Due NASD Dispute Resolution	= \$ 300.00

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


  
\_\_\_\_\_  
Karen S. Lowe  
Claimant

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

NASD Dispute Resolution  
Arbitration No. 02-06960  
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**Parties' Signatures**

MERRILL LYNCH, PIERCE, FENNER & SMITH INC.

by: 

Merrill Lynch, Pierce, Fenner & Smith Inc.  
Respondent

11/12/03  
Signature Date

  
William Granville Dilley  
Respondent


10/17/2003  
Signature Date

**ARBITRATION PANEL**

John S. Weisheit	-	Public Arbitrator, Presiding Chair
Thomas A. Donovan	-	Public Arbitrator
Stephen Cartwright	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, that I am the individual described herein and who executed this instrument is which is my award.

  
John S. Weisheit  
Public Arbitrator, Presiding Chairperson

10-15-03  
Signature Date

\_\_\_\_\_  
Thomas A. Donovan  
Public Arbitrator

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

\_\_\_\_\_  
Stephen Cartwright  
Non-Public Arbitrator

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

October 23, 2003  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

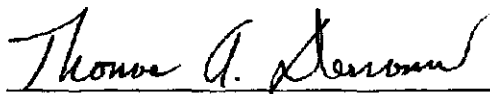
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John S. Weisheit  
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Signature Date

  
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Thomas A. Donovan  
Public Arbitrator

10-14-03  
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Signature Date

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Non-Public Arbitrator

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Signature Date

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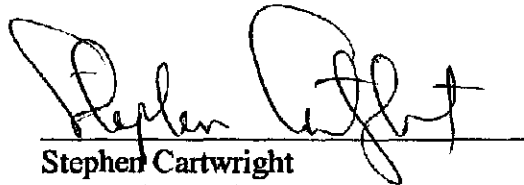
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Public Arbitrator, Presiding Chairperson

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Signature Date

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Thomas A. Donovan  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Stephen Cartwright  
Non-Public Arbitrator

10-10-03  
\_\_\_\_\_  
Signature Date

October 23, 2003

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Date of Service (For NASD Dispute Resolution use only)