

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

In the Matter of the Arbitration Between:

Name of the Claimant  
Richard L. Worsham

Case Number: 02-07631

Names of the Respondents  
Merrill Lynch, Pierce,  
Fenner & Smith, Inc.  
Merrill Lynch & Company  
William R. O'Neil

Hearing Site: New Orleans, Louisiana

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

**REPRESENTATION OF PARTIES**

For Richard L. Worsham, hereinafter referred to as "Claimant": George R. Mead, II, Esq., Moore, Hill & Westmoreland, P.A., Pensacola, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"), Merrill Lynch & Company ("Merrill & Company") and William R. O'Neil ("O'Neil"), hereinafter collectively referred to as "Respondents": Leland D. Barringer, Esq., Miller, Canfield, Paddock and Stone, P.L.C., Detroit, Michigan.

**CASE INFORMATION**

Statement of Claim filed on or about: December 13, 2002.

Joint Stipulation of Stay filed on or about: December 13, 2002.

Claimant signed the Uniform Submission Agreement: December 11, 2002.

Statement of Answer filed by Respondents Merrill and O'Neil on or about: April 18, 2003.

Statement of Answer filed by Respondent Merrill & Company on or about: October 2, 2003.

Respondents did not file executed Uniform Submission Agreements.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; and, violation of Florida Blue Sky Law. The causes of action relate to investments in Claimant's account in unspecified equity stock.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested damages of \$215,000.00, interest, costs incurred in this action, and reasonable attorneys' fees incurred in the litigation.

Respondents requested that the Statement of Claim be denied in all respects, dismissed with prejudice, that Respondents be awarded their costs and attorneys' fees and granted such other and further relief as is deemed just and proper. Further, Respondent O'Neil requested that the Panel order that all references to Claimant's claims and this case be expunged from his Central Registration Depository ("CRD") record.

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

Respondents Merrill and O'Neil did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Respondent Merrill & Company did not file with NASD Dispute Resolution a properly executed submission to arbitration but submitted to arbitration pursuant to the Joint Stipulation of Stay executed by counsel wherein all parties agreed that the matter in the Circuit Court in and for Escambia County, Florida, Civil Division shall be stayed, and the dispute submitted to arbitration for a decision as to the merits of the claims at issue.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are dismissed, with prejudice.

Any and all claims for relief not specifically addressed herein, including Claimant's claims for relief pursuant to Florida Blue Sky Law, are denied.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent O'Neil's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent O'Neil must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **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

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm, Merrill, is a party.

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

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments for which fees were assessed were granted 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 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 Pre-hearing session with the Panel @ \$1,125.00         | = \$1,125.00 |
| Pre-hearing conference:      October 1, 2003      1 session |              |
| Seven Hearing sessions @ \$1,125.00                         | = \$7,875.00 |
| Hearing Dates:              March 31, 2004      2 sessions  |              |
| April 1, 2004      3 sessions                               |              |
| April 2, 2004      2 sessions                               |              |

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|                  |              |
|------------------|--------------|
| Total Forum Fees | = \$9,000.00 |
|------------------|--------------|

The Panel has assessed the total forum fees of \$9,000.00 to Respondent Merrill.

### **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 in this matter.

**FEE SUMMARY**

Claimant is solely liable for:

|                    |            |
|--------------------|------------|
| Initial Filing Fee | = \$300.00 |
|--------------------|------------|

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|            |            |
|------------|------------|
| Total Fees | = \$300.00 |
|------------|------------|

|               |            |
|---------------|------------|
| Less payments | = \$300.00 |
|---------------|------------|

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|                                     |          |
|-------------------------------------|----------|
| Balance Due NASD Dispute Resolution | = \$0.00 |
|-------------------------------------|----------|

Respondent Merrill is solely liable for:

|             |              |
|-------------|--------------|
| Member Fees | = \$5,200.00 |
|-------------|--------------|

|            |              |
|------------|--------------|
| Forum Fees | = \$9,000.00 |
|------------|--------------|

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|            |               |
|------------|---------------|
| Total Fees | = \$14,200.00 |
|------------|---------------|

|               |              |
|---------------|--------------|
| Less payments | = \$5,200.00 |
|---------------|--------------|

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|                                     |              |
|-------------------------------------|--------------|
| Balance Due NASD Dispute Resolution | = \$9,000.00 |
|-------------------------------------|--------------|

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

**ARBITRATION PANEL**

|                         |   |                                    |
|-------------------------|---|------------------------------------|
| Daniel Q. Posin, Esq.   | - | Public Arbitrator, Presiding Chair |
| Charles Kirk Reasonover | - | Public Arbitrator                  |
| Sandra J. Bakalus       | - | Non-Public Arbitrator              |

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
Daniel Q. Posin, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/S/\_\_\_\_\_  
Charles Kirk Reasonover  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
Sandra J. Bakalus  
Non-Public Arbitrator

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

April 15, 2004  
Date of Service (For NASD Dispute Resolution office use only)

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No administrative costs were incurred in this matter.

### FEE SUMMARY

Claimant is solely liable for:

Initial Filing Fee = \$300.00

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Total Fees = \$300.00

Less payments = \$300.00

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Balance Due NASD Dispute Resolution = \$0.00

Respondent Merrill is solely liable for:

Member Fees = \$5,200.00

Forum Fees = \$9,000.00

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Total Fees = \$14,200.00

Less payments = \$5,200.00

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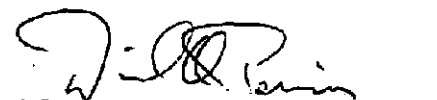
Balance Due NASD Dispute Resolution = \$9,000.00

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### ARBITRATION PANEL

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| Charles Kirk Reasonover | - | Public Arbitrator                  |
| Sandra J. Bakalus       | - | Non-Public Arbitrator              |

### Concurring Arbitrators' Signatures



Daniel Q. Posin, Esq.  
 Public Arbitrator, Presiding Chair

4/7/04  
 Signature Date

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Charles Kirk Reasonover  
 Public Arbitrator

---

Signature Date

NASD Dispute Resolution  
 Arbitration No. 02-07631  
 Award Page 4

No administrative costs were incurred in this matter.

### FEE SUMMARY

Claimant is solely liable for:

Initial Filing Fee = \$300.00

Total Fees = \$300.00

Less payments = \$300.00

Balance Due NASD Dispute Resolution = \$0.00

Respondent Merrill is solely liable for:

Member Fees = \$5,200.00

Forum Fees = \$9,000.00

Total Fees = \$14,200.00

Less payments = \$5,200.00

Balance Due NASD Dispute Resolution = \$9,000.00

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

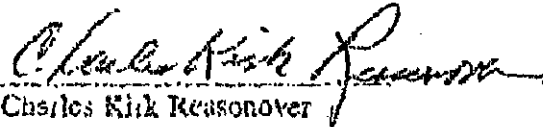
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| Charles Kirk Reasonover | - | Public Arbitrator                  |
| Sandra J. Bakalus       | - | Non-Public Arbitrator              |

### Concurring Arbitrators' Signatures

Daniel Q. Posin, Esq.  
 Public Arbitrator, Presiding Chair

Signature Date

  
 Charles Kirk Reasonover  
 Public Arbitrator

4/12/04  
 Signature Date

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Arbitration No. 02-J1831  
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Sandra J. Bakalos  
Non-Public Arbitrator

  
Signature Date

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