

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

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*In the Matter of the Arbitration Between:*

Mary Kelly O'Connor (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc.  
(Respondent)

Case Number: 03-00001

Hearing Site: Cincinnati, Ohio

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Nature of the Dispute: Associated Person v. Member.

**REPRESENTATION OF PARTIES**

Claimant Mary Kelly O'Connor ("O'Connor") hereinafter referred to as "Claimant":  
Robert A. Klingler, Esq., Robert A. Klingler Co., L.P.A., Cincinnati, OH.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") hereinafter  
referred to as "Respondent": Maria V. Martin, Esq., Rubin & Associates, P.C., Paoli,  
PA.

**CASE INFORMATION**

Statement of Claim filed on or about: December 26, 2002.

Response to Respondent's Motion to Dismiss the Statement of Claim filed on or about:  
June 2, 2003.

Claimant signed the Uniform Submission Agreement: March 4, 2003.

Statement of Answer filed by Respondent on or about: May 13, 2003.

Motion to Dismiss the Statement of Claim filed by Respondent on or about: May 13,  
2003.

Respondent signed the Uniform Submission Agreement: May 12, 2003.

**CASE SUMMARY**

Claimant asserted the following cause of action: wrongful termination.

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

**RELIEF REQUESTED**

Claimant requested actual damages for loss of past and future income and benefits,  
including stock options and bonuses and for emotional distress, embarrassment, and loss

of enjoyment of life in the amount of \$3,000,000.00; punitive damages in the amount of \$2,000,000.00; costs; attorneys' fees; forum fees; other costs; and all other relief to which she may be entitled. In her Response to Respondent's Motion to Dismiss the Statement of Claim, Claimant requested that Respondent's motion on the pleadings be denied.

Respondent requested that Claimant's claim be denied in its entirety, that all costs be assessed against Claimant, and that the Panel award to Respondent all other relief deemed reasonable and appropriate. In its Motion to Dismiss the Statement of Claim, Respondent requested that the Panel dismiss the Statement of Claim in its entirety with prejudice.

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

Claimant made a motion to amend the Statement of Claim. The Panel denied the motion in an Order prior to the hearing. In addition, Claimant made a motion to amend the Witness List between hearing dates. The motion was overruled.

Claimant made an oral motion to call a rebuttal witness at the close of evidence. The motion was sustained and Corlan Waterbury was permitted to testify.

Respondent made a motion to dismiss prior to the beginning of the hearing on the grounds that no such cause of action as made by the Claimant exists under Ohio law. The motion was overruled prior to the hearing. At the hearing, Respondent renewed orally the motion to dismiss for the same reasons contained in the previously filed written motion.

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 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:

1. Claimant's claim is denied in its entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

### 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 = \$600.00

#### 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 events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge = \$2,800.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$5,000.00

#### 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 a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: January 19, 2004 1 session

Three (3) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 3,600.00  
Pre-hearing conferences: September 10, 2003 1 session  
January 27, 2004 1 session  
March 10, 2004 1 session

Ten (10) Hearing sessions @ \$1,200.00 = \$12,000.00  
Hearing Dates: February 3, 2004 2 sessions  
February 4, 2004 2 sessions  
February 5, 2004 2 sessions  
June 2, 2004 2 sessions  
June 3, 2004 2 sessions

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Total Forum Fees = \$16,050.00

1. The Panel has assessed \$8,025.00 of the forum fees against Claimant.
2. The Panel has assessed \$8,025.00 of the forum fees against Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 8,025.00
Total Fees	= \$ 8,625.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 6,825.00

2. Respondent is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 8,025.00
Total Fees	= \$16,575.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 8,025.00

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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**ARBITRATION PANEL**

Bill Swinford, Jr., Esq.	-	Public Arbitrator, Presiding Chair
Carol M. Stoner, Esq.	-	Public Arbitrator
Robert Economou	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.



Bill Swinford, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

6/23/04  
Signature Date

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Carol M. Stoner, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Robert Economou  
Non-Public Arbitrator

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

July 1, 2004

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

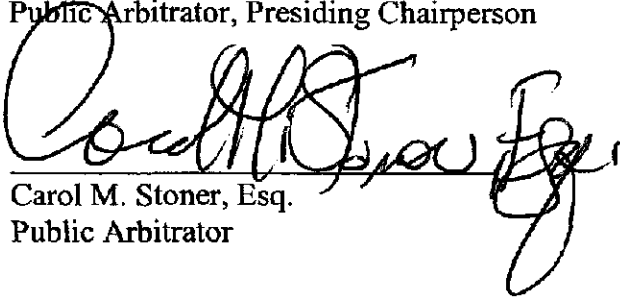
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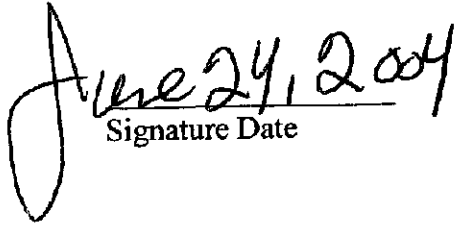
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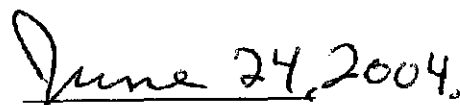
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