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

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In the Matter of the Arbitration Between:

Name of the Claimant  
William P. Roversi

Case Number: 03-00358

Names of the Respondents  
Merrill Lynch, Pierce, Fenner and Smith, Inc.  
Robert Bos  
Karl A. Ernst

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For William P. Roversi, hereinafter referred to as "Claimant": John R. Kiefner, Jr., Esq., Kiefner and Renaldo, P.A., Saint Petersburg, Florida.

For Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLPFS"), Robert Bos ("Bos") and Karl A. Ernst, Jr. ("Ernst"), hereinafter collectively referred to as "Respondents": Richard L. Martens, Esq., Boose, Casey, Ciklin, Martens, McBane and O'Connell, West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: February 21, 2003.

Claimant signed the Uniform Submission Agreement: February 12, 2003.

Answer and Affirmative Defenses filed by Respondents on or about: May 14, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: March 4, 2003.

Respondent Bos did not submit an executed Uniform Submission Agreement.

Respondent Ernst did not submit an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) violation of Section 517.301, Florida Statutes; 2) negligent supervision; 3) negligence – NASD Conduct Rules violation; 4) churning; 5) negligence; 6) gross negligence; 7) breach of fiduciary duty; 8) common law fraud; 9) fraud in the inducement; and 10) breach of contract. The causes of action relate to Claimant's mutual fund investments in, including but not limited to, Van Kampen Technology, Van Kampen Aggressive Growth and Van Kampen Select Growth.

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

**RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$308,549.91; 2) punitive damages; 3)

statutory interest; 4) costs; 5) attorneys' fees; and 6) such other relief as the undersigned arbitrators (the "Panel") deem just and proper.

Respondents requested: 1) that the Panel dismiss Claimant's claims in their entirety; 2) that forum fees and costs be assessed against Claimant; 3) that this matter be expunged from Respondents' Bos and Ernst NASD Central Registration Depository ("CRD") records; and 4) such other relief deemed proper by the Panel.

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

Respondents Bos and Ernst did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about August 28, 2005, Claimant notified NASD Dispute Resolution that the parties had settled this matter and agreed to the entry of a Stipulated Award.

On or about October 7, 2005, the parties filed a proposed Stipulated Award with a request for expungement of the NASD CRD record of Respondents Bos and Ernst.

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

#### **AWARD**

After considering the parties' submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's withdrawal of his claims against Respondents, with prejudice, is accepted and Respondents are dismissed from this matter.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents' Bos and Ernst registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Bos and Ernst must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. All other requests for relief, which are not addressed specifically in this Award, including punitive damages and attorneys' fees, are denied with prejudice.

#### **FEES**

Pursuant to the NASD 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. Accordingly, Respondent MLPFS is a party and was a member firm.

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 13 - 16, 2004, adjournment requested by Claimant	= \$1,125.00
December 13 - 17, 2004, adjournment requested by Respondents	= \$1,125.00

The Panel assessed the total adjournment fee of \$1,125.00 to Claimant.

The Panel assessed the total adjournment fee of \$1,125.00 to Respondents, jointly and severally.

**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:

The Panel has assessed a three-day cancellation fee of \$300.00 as follows:

\$150.00 to Claimant.

\$150.00 to Respondents, jointly and severally.

**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.

There were no injunctive relief fees assessed during this proceeding.

**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 (1) Pre-hearing session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: August 28, 2003 1 session	

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Total Forum Fees	= \$1,125.00
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The Panel has assessed \$562.50 of the forum fees to Claimant.

The Panel has assessed \$562.50 of the forum fees to Respondents, jointly and severally.

**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.

There were no administrative costs incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fees	= \$1,125.00
Three-Day Cancellation Fees	= \$ 150.00
Forum Fees	= \$ 562.50
Retained Hearing Session Deposit pursuant to Rule 10332(f) of Code	= \$ 562.50
Total Fees	= \$2,700.00
<u>Less payments</u>	<u>= \$2,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

<u>Member Fees</u>	<u>= \$5,200.00</u>
Total Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Adjournment Fees	= \$1,125.00
Three-Day Cancellation Fees	= \$ 150.00
Forum Fees	= \$ 562.50
Total Fees	= \$1,837.50
<u>Less payments</u>	<u>= \$1,837.50</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Richard Andrew Cahlin, CPA	-	Public Arbitrator, Presiding Chairperson
Linda M. Granata, Esq.	-	Public Arbitrator
David M. Auerbach	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Richard Andrew Cahlin, CPA  
Public Arbitrator, Presiding Chairperson

10/20/05  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Linda M. Granata, Esq.  
Public Arbitrator

10/20/05  
Signature Date

**Dissenting Arbitrator's Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
David M. Auerbach  
Non-Public Arbitrator

10/20/05  
Signature Date

10/21/05  
Date of Service (For NASD Dispute Resolution office use only)

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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 recently.

There were no administrative costs incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fees	= \$1,125.00
Three-Day Cancellation Fees	= \$ 150.00
Forum Fees	= \$ 562.50
Relayed Hearing Session Deposit pursuant to Rule 10332(a) of Code	= \$ 562.50
<u>Total Fees</u>	= \$2,700.00
<u>Less payments:</u>	= \$2,700.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPS is solely liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments:</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Adjournment Fees	= \$1,125.00
Three-Day Cancellation Fees	= \$ 150.00
Forum Fees	= \$ 562.50
<u>Total Fees</u>	= \$1,837.50
<u>Less payments:</u>	= \$1,837.50
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Richard Andrew Cahlin, CPA	Public Arbitrator, Presiding Chairperson
Linda M. Granda, Esq.	Public Arbitrator
David M. Ametsch	Non-Public Arbitrator

Concurring Arbitrators' Signatures

*Richard Andrew Cahlin* 10.20.06  
 Richard Andrew Cahlin, CPA  
 Public Arbitrator, Presiding Chairperson  
 Signature Date

NASD Dispute Resolution  
Arbitration No. 03-00358  
~~Consolidated Case No. 1~~

  
Linda M. Granata, Esq.  
Public Arbitrator

10/20/05  
Signature Date

Dispute Resolution Arbitrator's Signature

\_\_\_\_\_  
David M. Amerbach  
Non-Public Arbitrator

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

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

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Linda M. Gennaro, Esq.  
Public Arbitrator

Signature Date

Dispute Arbitration Signatures

Daniel M. Macbeth  
Non-Public Arbitrator

Signature Date



Oct. 20, 2005

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