

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Edith Bristol

Case Number: 03-02109

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Michael Paolone

Michael Rotay

Hearing Site: Philadelphia, PA

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

**REPRESENTATION OF PARTIES**

Claimant, Edith Bristol, hereinafter referred to as "Claimant", was represented by Robert A. Rapkin, Esq., Kimmel & Silverman, Ambler, Pennsylvania.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Michael Paolone ("Paolone") and Michael Rotay ("Rotay"), hereinafter collectively referred to as "Respondents", were represented by Elizabeth Hoop Fay, Esq., Morgan Lewis & Bockius, LLP, Philadelphia, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on: March 19, 2003.

Claimant signed the Uniform Submission Agreement on: March 18, 2003.

Statement of Answer filed by Respondents on: June 26, 2004.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on: May 16, 2003.

Respondent Paolone submitted a signed, undated Uniform Submission Agreement.

Respondent Rotay signed the Uniform Submission Agreement on: June 25, 2003.

Claimant filed a Motion to Amend the Statement of Claim on: March 9, 2004.

Respondents filed a Response of Respondents to Claimant's Motion to Amend the Statement of Claim and a Cross-Motion to Dismiss Claimant's Claims as to Michael Rotay on: March 29, 2004.

Claimant filed a Response to Respondents' Response to Claimant's Motion to Amend the Statement of Claim and Cross-Motion to Dismiss Claimant's Claims as to Michael Rotay on: April 8, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: breach of contract, negligence,

failure to supervise, breach of fiduciary duty, misrepresentations/non-disclosures, churning, omission of fact, suitability, and manipulation. The causes of action relate to the purchase and sale of unspecified common stock, corporate bonds, "Ginnie Maes", mutual funds, and other unspecified equities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; estoppel; waiver; ratification, approval, acceptance, acquiescence; assumption of risk; Claimant's claims are barred by the applicable statutes of limitations; failure to mitigate damages; Claimant's claims are barred by NASD Code of Arbitration Procedure Rule 10304; proper supervision; any losses suffered were the result of market conditions; and, no material misrepresentations were made.

#### **RELIEF REQUESTED**

Claimant in her Statement of Claim requested:

Compensatory Damages	\$ 1,400,650.50
Punitive Damages	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed in its entirety, that the costs and fees of this action be assessed against Claimant, and that the Arbitration Panel (the "Panel") order all references to this matter be expunged from the records maintained by the Central Registration Depository ("CRD") regarding Respondents Paolone and Rotay.

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

On May 3, 2004, the Arbitration Panel (the "Panel") denied Claimant's Motion to Amend the Statement of Claim and Respondents' Cross-Motion to Dismiss the Statement of Claim.

At the start of the hearing on the merits, all parties agreed that the matter as against Respondent Rotay would be dismissed in its entirety. Thus, the allegations against Respondent Rotay were dismissed with prejudice.

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, 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 claims are denied in their entirety;

2. Claimant's claims for punitive damages are denied in their entirety;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Paolone's and Rotay'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, Respondents Paolone and Rotay must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
4. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
5. Any and all relief not specifically addressed herein is denied in its entirety.

### **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	= \$ 500.00
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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 person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 Panel @ \$ 1,200.00		= \$ 1,200.00
Pre-hearing conference: November 26, 2003	1 session	
Four (4) Hearing sessions @ \$ 1,200.00		= \$ 4,800.00
Hearing Dates: May 24, 2004	2 sessions	
May 25, 2004	2 sessions	
Total Forum Fees		= \$ 6,000.00

1. The Panel has assessed \$ 3,000.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 3,000.00 of the forum fees jointly and severally to Respondents.

#### **FEES SUMMARY**

1. Claimant, Bristol, is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 3,000.00</u>
Total Fees	= \$ 3,500.00
<u>Less payments</u>	<u>= \$ 1,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,800.00

2. Respondent, Merrill Lynch, is assessed and shall pay the following fees:

<u>Member Fees</u>	<u>= \$ 8,550.00</u>
Total Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 00.00

3. Respondents, Merrill Lynch, Paolone, and Rotay, are jointly and severally assessed and shall pay the following fees:

<u>Forum Fees</u>	<u>= \$ 3,000.00</u>
Total Fees	= \$ 3,000.00
<u>Less payments</u>	<u>= \$ 00.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,000.00

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

#### **ARBITRATION PANEL**

James Kenneth Fruehling, Esq.	-	Public Arbitrator, Presiding Chairperson
Howard B. Asher, CPA	-	Public Arbitrator, Panelist
David Denison	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



James Kenneth Fruehling, Esq.  
Public Arbitrator, Presiding Chairperson

6/2/04  
Signature Date

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Howard B. Asher, CPA  
Public Arbitrator, Panelist

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Signature Date

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David Denison  
Non-Public Arbitrator, Panelist

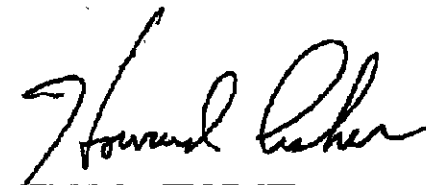
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Signature Date

June 4, 2004  
Date of Service (For NASD Dispute Resolution office use only)

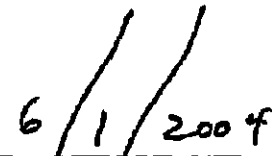
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