

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

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In the Matter of the Arbitration Between:

Stephen Devillo and Norma M. Devillo (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and William P. Loftus (Respondents)

Case Number: 03-02497

Hearing Site: New York, New York

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Nature of the Dispute: Customers v. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants Stephen Devillo and Norma M. Devillo hereinafter collectively referred to as "Claimants": Sheldon H. Gopstein, Esq., Law Office of Sheldon H. Gopstein, New York, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and William P. Loftus ("Loftus") hereinafter collectively referred to as "Respondents": Donald S. Davidon, Esq., and Cynthia L. Ginsberg, Esq., Bingham McCutchen, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: April 3, 2003.

Claimants signed the Uniform Submission Agreement: March 13, 2003.

Joint Statement of Answer filed by Respondents on or about: June 27, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: May 21, 2003.

Respondent Loftus signed the Uniform Submission Agreement: June 3, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; negligence; breach of fiduciary duty; breach of contract; respondeat superior; apparent authority; and failure to supervise. The causes of action relate to various common stocks and mutual funds.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$106,405.81; commissions; interest; NASD fees; attorneys' fees and costs; and such other and further relief as may be just,

proper, and equitable.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety; an order expunging this claim from Respondent Loftus' CRD record; and such other relief as the Panel deems appropriate.

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

On or about June 4, 2004, Claimants notified NASD Dispute Resolution that this matter settled and that the parties were requesting a Stipulated Award.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

#### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The parties have agreed to settle this matter for a sum certain to be paid by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.
2. Claimants' claims are hereby dismissed in their entirety with prejudice.
3. Any and all relief requests not specifically addressed herein are denied.
4. Expungement of reference to these proceedings and the settlement from the registration records of William P. Loftus maintained by the NASD Central Registration Depository ("CRD") would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements. Therefore, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent William P. Loftus' 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 Loftus must obtain confirmation from a court of competent jurisdiction before 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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member Surcharge = \$1,700.00

Pre-Hearing Process Fee = \$ 750.00

Hearing Process Fee = \$2,750.00

Total Member Fees = \$5,200.00

**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$1,125.00

Pre-hearing conference: December 9, 2003 1 session

Total Forum Fees = \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$562.50 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$1,125.00

Total Fees = \$1,425.00

Less payments = \$1,425.00

Balance Due NASD Dispute Resolution = \$ 0.00

*Pursuant to Rule 10332(f) of the Code of Arbitration Procedure, NASD is retaining the total amount of the hearing session deposited by the Claimants because this office was notified by the parties that they settled or withdrew this matter within eight business days of the first scheduled hearing session.*

2. Respondent Merrill Lynch is solely liable for:

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


3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50


All balances are due and payable to NASD Dispute Resolution.

NASD Dispute Resolution  
Arbitration No. 03-00497  
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Parties' Signatures

  
Sheldon R. Gopstein, Esq.  
Attorney for Claimants

7-8-05  
Signature Date

  
Cynthia L. Ginsberg, Esq.  
Attorney for Respondents

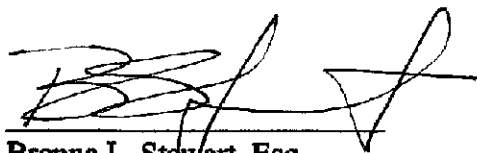
9/8/05  
Signature Date

**ARBITRATION PANEL**

Brenna L. Stewart, Esq.	-	Public Arbitrator, Presiding Chair
Manuel Schultz, Esq.	-	Public Arbitrator
Joseph A. Vallo, Esq.	-	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 is which is my award.



Brenna L. Stewart, Esq.  
Public Arbitrator, Presiding Chair

9/19/05  
Signature Date

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Manuel Schultz, Esq.  
Public Arbitrator

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

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Joseph A. Vallo, Esq.  
Non-Public Arbitrator

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Signature Date

September 27, 2005  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

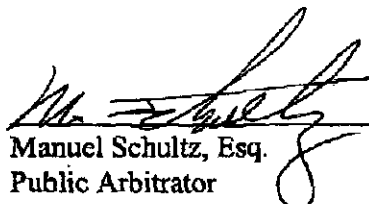
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Brenna L. Stewart, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
\_\_\_\_\_  
Manuel Schultz, Esq.  
Public Arbitrator

Sept. 19, 2005  
\_\_\_\_\_  
Signature Date

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Joseph A. Vallo, Esq.  
Non-Public Arbitrator

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Signature Date

September 27, 2005  
Date of Service (For NASD office use only)

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Brenna L. Stewart, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Manuel Schultz, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
Joseph A. Vallo, Esq.  
Non-Public Arbitrator

9/14/05  
\_\_\_\_\_  
Signature Date

September 27, 2005  
Date of Service (For NASD office use only)