

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

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In the Matter of the Arbitration Between:

Virginia B. Martin (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Jon K. Finstrom (Respondents)

Case Number: 03-03487

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant, Virginia B. Martin ("Martin") hereinafter collectively referred to as "Claimant":  
Sheldon H. Gopstein, Esq., Law Offices Sheldon H. Gopstein, Esq., New York, New York

Respondents, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Jon K. Finstrom ("Finstrom"), hereinafter collectively referred to as "Respondents": Keith Olin, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida. Previously represented by: Erik W. Scharf, Esq., Morgan Lewis & Bockius, LLP, Miramar, FL.

**CASE INFORMATION**

Statement of Claim filed on or about: May 12, 2003.

Claimant signed the Uniform Submission Agreement: April 25, 2003.

Joint Statement of Answer filed by Respondents on or about: August 22, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 23, 2003.

Respondent Finstrom signed the Uniform Submission Agreement: June 23, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; breach of fiduciary duties; negligence; misrepresentation; breach of contract; securities fraud; control person liability; respondeat superior; apparent authority; and failure to supervise. Claimant's claim involved mutual funds and municipal bond 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**

Claimant requested compensatory damages in the amount of \$147,408.48, plus commissions, asset management fees, foregone interest on the sold municipal bonds, interest, NASD fees, attorneys' fees and costs, and such other further relief as may be just, proper, and equitable.

Respondents requested a finding in their favor on all claims set forth in the Statement of Claim, dismissal of the Statement of Claim in its entirety, costs and forum fees, the expungement of all references to this matter from the registration records of respondent Finstrom, and a specific finding that this action lacked merit and referral to a court of competent jurisdiction for attorneys' fees.

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

Claimant and Respondents entered into a confidential settlement agreement. In connection with that agreement, Claimant dismissed all claims with prejudice against Respondents in July 2004.

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 entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The Statement of Claim is dismissed with respect to Respondent Jon K. Finstrom and settled and dismissed with respect to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.
2. Based upon the joint request of the parties, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Jon K. Finstrom'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, Respondent Finstrom must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Each Party shall bear its respective costs, including attorneys' fees.
4. All other requests for relief, which are not addressed specifically in this Award, are denied with prejudice.

### **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
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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 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
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
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
<u>Pre-hearing conference: January 20, 2004 1 session</u>	
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees against Claimant.
2. The Panel has assessed \$562.50 of the forum fees jointly and severally against Respondents Merrill Lynch and Finstrom.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,425.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

*Pursuant to Rule 10332(f) of the Code of Arbitration Procedure, NASD is retaining the total initial amount of the hearing session deposited by the Claimant because this office was notified by the parties that they settled this matter within 8 business days of the first scheduled hearing session.*

2. Respondent Merrill Lynch is solely liable for:

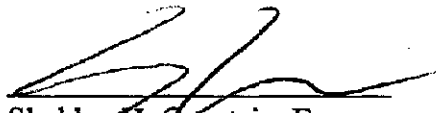
<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 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

**Parties' Signatures**



Sheldon H. Gopstein, Esq.  
Counsel for Claimant, Virginia B. Martin

2/15/05  
Signature Date



Bressler Amery & Ross, P.C.  
Counsel for Respondent Merrill Lynch Pierce Fenner & Smith, Inc.

4/21/05  
Signature Date



Bressler Amery & Ross, P.C.  
Counsel for Respondent Jon K. Finstrom

4/21/05  
Signature Date

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**ARBITRATION PANEL**

Elliott S. Orol, Esq.	-	Public Arbitrator, Chairperson
Ernesto V. Luzzatto	-	Public Arbitrator
John W. Engelskirger	-	Non-Public Arbitrator

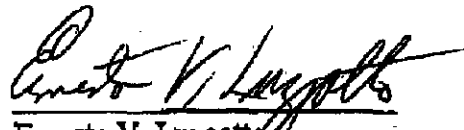
**Concurring Arbitrators' Signatures**

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Elliott S. Orol, Esq.  
Public Arbitrator, Chairperson

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Signature Date

  
Ernesto V. Luzzatto  
Public Arbitrator

May 3, 2005  
Signature Date

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John W. Engelskirger  
Non-Public Arbitrator

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Signature Date

May 13, 2005  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Elliott S. Orol, Esq.	-	Public Arbitrator, Chairperson
Ernesto V. Luzzatto	-	Public Arbitrator
John W. Engelskirger	-	Non-Public Arbitrator

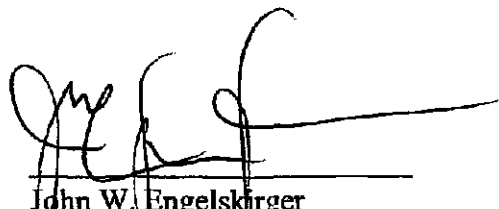
**Concurring Arbitrators' Signatures**

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Elliott S. Orol, Esq.  
Public Arbitrator, Chairperson

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Signature Date

\_\_\_\_\_  
Ernesto V. Luzzatto  
Public Arbitrator

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

  
\_\_\_\_\_  
John W. Engelskirger  
Non-Public Arbitrator

5-5-05  
\_\_\_\_\_  
Signature Date

May 13, 2005  
Date of Service (For NASD office use only)