

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

---

In the Matter of the Arbitration Between:

Salvadore A. Russo and Ann Russo (Claimants) v. Anthony John Dinallo, Jr., Corinne Daloia Chauvin and Merrill Lynch, Pierce, Fenner & Smith, Inc. (Respondents)

Case Number: 03-04059

Hearing Site: Albany, New York.

---

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

**REPRESENTATION OF PARTIES**

Salvadore A. Russo ("Sal Russo") and Ann Russo ("Ann Russo") hereinafter collectively referred to as ("Claimants"): Robert A. Kantas, Esq., Shephard, Smith & Edwards, L.L.P., Houston, TX, previously Richard Spector, Esq., Spector Law Offices, P.C.

Anthony John Dinallo, Jr. ("Dinallo") and Merrill Lynch Pierce Fenner & Smith ("Merrill"): Lawrence D. Ross, Esq., Bressler, Amery & Ross, P.C. New York, NY, previously Thomas L. Weisenbeck, Esq., Bressler, Amery & Ross, P.C. New York, NY.

Corinne Daloia Chauvin ("Chauvin") hereinafter referred to as ("Chauvin"): David Spears, Esq., Richards Spears Kibbe & Orbe LLP New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 2, 2003.

Claimant Sal Russo signed the Uniform Submission Agreement: June 17, 2003.

Claimant Ann Russo signed the Uniform Submission Agreement: June 17, 2003.

Joint Statement of Answer filed by Dinallo and Merrill on or about: August 28, 2003.

Respondent Dinallo signed the Uniform Submission Agreement: December 30, 2003.

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

Statement of Answer filed by Chauvin on or about: September 4, 2003.

Respondent Chauvin signed the Uniform Submission Agreement: September 3, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: suitability, breach of fiduciary duty, fraud, negligence and failure to supervise.

Unless specifically admitted in their Answer, Dinallo and Merrill denied the allegations

of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

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

### **RELIEF REQUESTED**

Claimants requested the following:

1. Rescission of all contracts between Claimants' and Merrill's Retirement Plus Variable Annuity program (being Annuity Contract No. Y991574243 and Annuity Contract No. Y021994265);
2. Restitution of all amounts paid to Merrill's Retirement Plus Variable Annuity program (being Annuity Contract No. Y991574243 and Annuity Contract No. Y021994265) less withdrawals, or \$230,000.00;
3. Compensatory damages arising out of Respondents' unsuitable investments and/or over-concentration of unsuitable equities in Claimants' accounts in an amount of not less than \$230,000.00;
4. Compensatory damages arising out of Respondents' failure to suitably allocate Claimants' investment account from September, 1997 through May, 2002, in an amount of \$99,898.09;
5. For disgorgement of all of Respondents' fees, commissions and other income derived from their activities as to Claimants' accounts described herein, but in an amount no less than \$24,000.00;
6. Punitive damages; attorneys', experts, investigators fees and costs incurred in the filing of this claim; and pre-award and post-award interest at the maximum rate allowed by law from the date of the original investment.

Dinallo and Merrill requested dismissal of the Statement of Claim with prejudice, that the arbitrators enter an order expunging or striking this claim from Dinallo's CRD; and award Respondents costs and other further relief as they deem just and proper.

Respondent Chauvin adopted the arguments set forth in the Answer of the First Respondents.

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

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. Claimants' claims are hereby dismissed with prejudice.
2. The Panel recommends the expungement of all references to the above captioned arbitration from the registration records maintained by the NASD Central Registration Depository ("CRD") of Respondent Anthony John Dinallo, Jr., with the understanding that pursuant to NASD Notices to Member 99-09 and 99-54, Dinallo must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The Panel recommends the expungement of all references to the above captioned arbitration from the registration records maintained by the NASD Central Registration Depository ("CRD") of Respondent Corinne Daloia Chauvin, with the understanding that pursuant to NASD Notices to Member 99-09 and 99-54, Chauvin must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Each party shall bear its own costs and expenses associated with the above-referenced arbitration.
5. Any and all relief not specifically addressed herein is denied.

### **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	= \$ 375.00
--------------------------	-------------

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 4,000.00
Total Member Fees	= \$ 7,000.00

### **Adjournment Fees**

The following adjournment fees are assessed:

February 2, 3, 4 & 5, 2005 adjournment requested by the Parties	Waived
February 8, 9, 10 & 11, 2005 adjournment requested by Claimants	= \$ 1,200.00

### **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:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session		
		= \$ 3,600.00
Pre-hearing conferences:	January 6, 2004	1 session
	March 23, 2004	1 session
	June 3, 2004	1 session
<hr/> Total Forum Fees		= \$ 3,600.00

1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimants have been assessed \$900.00 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Merrill has been assessed \$900.00 of the forum fees.
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Dinallo has been assessed \$900.00 of the forum fees.
4. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Chauvin has been assessed \$900.00 of the forum fees.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 900.00
<hr/> Total Fees	= \$ 2,475.00
<u>Less payments</u>	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 775.00
2. Respondent Merrill is solely liable for:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 900.00
<hr/> Total Fees	= \$ 7,900.00
<u>Less payments</u>	= \$13,550.00
Refund Due Respondent Merrill	= \$ 5,650.00

3. Respondent Dinallo is solely liable for:

<u>Forum Fees</u>	= \$	900.00
<u>Total Fees</u>	= \$	900.00
<u>Less payments</u>	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	900.00

4. Respondent Chauvin is solely liable for:

<u>Forum Fees</u>	= \$	900.00
<u>Total Fees</u>	= \$	900.00
<u>Less payments</u>	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	900.00

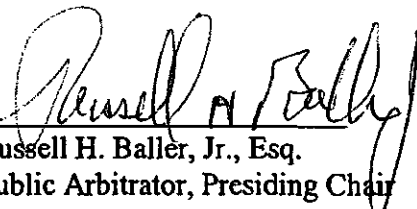
All balances are due and payable to NASD Dispute Resolution.

**ARBITRATION PANEL**

Russell H. Baller, Jr., Esq.	-	Public Arbitrator, Presiding Chair
William M. Peters, Sr.	-	Public Arbitrator
Cheryl Feldman	-	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, which is my award.

  
\_\_\_\_\_  
Russell H. Baller, Jr., Esq.  
Public Arbitrator, Presiding Chair

3/3/2006  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
William M. Peters, Sr.  
Public Arbitrator

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

\_\_\_\_\_  
Cheryl Feldman  
Non-Public Arbitrator

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

March 16, 2006  
\_\_\_\_\_  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**


Russell H. Baller, Jr., Esq.	-	Public Arbitrator, Presiding Chair
William M. Peters, Sr.	-	Public Arbitrator
Cheryl Feldman	-	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, which is my award.

\_\_\_\_\_  
Russell H. Baller, Jr., Esq.  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
William M. Peters, Sr.  
Public Arbitrator

3.16.06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Cheryl Feldman  
Non-Public Arbitrator

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

March 16, 2006

\_\_\_\_\_  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Russell H. Baller, Jr., Esq.	-	Public Arbitrator, Presiding Chair
William M. Peters, Sr.	-	Public Arbitrator
Cheryl Feldman	-	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, which is my award.

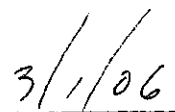
\_\_\_\_\_  
Russell H. Baller, Jr., Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
William M. Peters, Sr.  
Public Arbitrator

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

  
\_\_\_\_\_  
Cheryl Feldman  
Non-Public Arbitrator

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

March 16, 2006

\_\_\_\_\_  
Date of Service (For NASD office use only)