

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

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In the Matter of the Arbitration Between:

Irene Ross (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Stephen Mandel, Robin Reich and Robert Gorman (Respondents)

Case Number: 03-04324

Hearing Site: New York, New York

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Nature of Dispute: Customer v. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant Irene Ross ("Ross") hereinafter referred to as "Claimant": Richard A. Roth, Esq., The Roth Law Firm, New York, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill"), Steven Mandel ("Mandel"), Robin Reich ("Reich"), and Robert Gorman ("Gorman") hereinafter collectively referred to as "Respondents": William J. Manning, Jr., Esq., Loeb & Loeb LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 11, 2003.

Claimant signed the Uniform Submission Agreement: June 5, 2003.

Joint Statement of Answer filed by Respondents on or about: September 2, 2003.

Respondent Merrill signed the Uniform Submission Agreement: July 31, 2003.

Respondent Mandel signed the Uniform Submission Agreement: August 25, 2003.

Respondent Reich signed the Uniform Submission Agreement: September 8, 2003.

Respondent Gorman signed the Uniform Submission Agreement: August 25, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action against Respondents: unsuitability, breach of fiduciary duty, violations of NASD rules, fraud, failure to provide competent professional services, fraudulent misrepresentation, failure to supervise, and respondeat superior. Claimant's claim involved 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**

Claimant requested compensatory damages in an amount in excess of \$500,000.00, plus unspecified punitive damages, pre-award and post-award interest; attorneys' fees; costs; and other relief the Panel may deem just and proper.

Respondents requested dismissal, with prejudice, of Claimant's Statement of Claim, in its entirety, and that the Panel award Respondents attorney's fees, costs, and other further relief as they deem just and proper. Respondents also requested expungement of this matter from Respondents Mandel's, Reich's, and Gorman's CRD records maintained by the NASD.

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

Prior to the hearing, Respondents Reich and Gorman were dismissed with prejudice by Claimant.

Prior to the hearing, Respondent Mandel was dismissed with prejudice by Claimant.

Prior to the hearing, the parties fully and finally settled all claims by and between them. Therefore, the Parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

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

### **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 claims of Claimant are dismissed in their entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Robin Reich's, Robert Gorman's, and Stephen Mandel's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondents Robin Reich, Robert Gorman, and Stephen Mandel must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. Each party shall bear its own costs, including attorney's fees, except as Fees are specifically addressed below; and

4. Any and all relief not specifically addressed herein, including punitive damages, 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 = \$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. Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party.

Member surcharge = \$1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$2,750.00

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

The Panel has assessed 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. 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: February 27, 2004 1 session

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.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee = \$ 300.00  
Forum Fees = \$ 562.50  
Total Fees = \$ 862.50  
Less payments = \$1,425.00  
Refund Due to Claimant = \$ 562.50

## 2. Respondent Merrill 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 payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

Parties' Signatures

  
William J. Manning, Jr.  
Lobo & Lobo  
Attorney for Respondents

  
Richard A. Roth, Esq.  
The Roth Law Firm, PLLC  
Attorney for Claimant


7/23/04  
\_\_\_\_\_  
Signature Date

7/19/04  
\_\_\_\_\_  
Signature Date

**ARBITRATION PANEL**

Elizabeth Lubetkin	-	Public Arbitrator, Presiding Chairperson
Robert S. Feigen, Esq.	-	Public Arbitrator
Steven J. Petrie	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Elizabeth Lubetkin  
Public Arbitrator, Presiding Chairperson

9/9/04  
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Signature Date

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Robert S. Feigen, Esq.  
Public Arbitrator

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Signature Date

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Steven J. Petrie  
Non-Public Arbitrator

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Signature Date

August 26, 2004  
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Date of Service (For NASD Dispute Resolution use only)


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7/29/04  
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Signature Date

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