

**Stipulated Award  
NASD Dispute Resolution**

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**ARBITRATION BEFORE THE  
NASD DISPUTE RESOLUTION, INC.**

ELGIN W. WARE and KAREN G. WARE,

Claimants,

vs.

MERRILL LYNCH, PIERCE, FENNER  
& SMITH INCORPORATED and  
KAREN BEATTIE,

Respondents

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NASD# 03-04490

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**REPRESENTATION OF PARTIES**

Claimants Elgin W. Ware and Karen G. Ware, hereinafter referred to as "Claimants," were represented by Jeanne Crandall, Esq. Reyna Hinds & Crandall, 1201 Elm Street, Suite 3850, Dallas, Texas 75270-2199.

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Karen Beattie ("Beattie"), hereinafter collectively referred to as "Respondents", were represented by John Kincade, Winstead Sechrest & Minick P.C., 5400 Renaissance Tower, 1201 Elm Street, Dallas, Texas 75270-2199.

**CASE INFORMATION**

The Claimants filed the Statement of Claim on or about June 19, 2003.

The Claimants signed the Uniform Submission Agreement on June 13, 2003.

The Respondents filed the Statement of Answer on or about September 15, 2003.

Respondents Merrill Lynch and Karen Beattie submitted a signed Uniform Submission Agreement on or about September 15, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: Unsuitability, breach of contract, negligence, negligent supervision (failure to supervise), violations of the Texas Securities Act and the Texas Deceptive Trade Practices Act.

Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants' alleged damages were illusory, Claimants failed to state a claim, Claimants failed to particularize facts or legal theories under which Respondents could be held liable, Claimants self-directed their account, Claimants directed, authorized, consented to, acquiesced and/or ratified all transactions in their account, Claimants made the investment decisions they complained of, Claimants' alleged losses were due to their own investment decisions or market conditions outside Respondents' control and Respondents acted properly and in good faith, Respondents made no guarantee to Claimants, Claimants' claims are barred by waiver and estoppel, Claimants failed to mitigate their alleged damages, and Claimants had full knowledge of their investments and appreciated any risks associated with those investments.

#### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

Compensatory Damages	\$500,000
Punitive Damages	Unspecified
Attorneys fees/costs	Unspecified
Other Monetary/Non-Monetary Relief if any:	None

In their Answer, Respondents sought reimbursement of their attorneys' fees and expenses from Claimants, including refund of the member surcharge, and that this Complaint/Proceeding be expunged from Respondent Karen Beattie's CRD record.

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

The Claimants and Respondent Merrill Lynch settled this dispute. Karen Beattie is not a party to the settlement and she opposed the making of a settlement. Claimants and Respondent Merrill Lynch have executed a Settlement Agreement and Release. As part of the consideration for the settlement, Claimants agreed not to oppose the expungement of this matter from Respondent Beattie's CRD.

#### **STIPULATED AWARD**

Pursuant to the parties' agreement, the Arbitration Panel, without making any findings of fact or conclusions of law, has entered the following determination:

1. Claimants' claims against Respondents Merrill Lynch and Karen Beattie are dismissed with prejudice.

2. The Panel recommends the expungement of all reference to the above captioned complaint from Respondent Beatties' 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 Beattie must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Karen Beattie is not a party to the settlement and she opposed the making of a settlement.
4. Any and all relief not specifically addressed herein is 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 persons at the time of the events giving rise to the dispute. Merrill Lynch is a member firm and a party and the following member fees are assessed:

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 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:

Initial pre-hearing conference (full panel):	= \$ 1,125.00
Pre-hearing conference on July 16, 2004 (one arbitrator):	= \$ 450.00

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Total Forum Fees	= \$ 1,575.00
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The Panel has determined that Claimants and each Respondent shall each bear one third of the forum fees in the amount of \$525.00 to Claimants, \$525.00 to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., and \$525.00 to Respondent Karen Beattie.

Pursuant to Rule 10332(f), NASD Dispute Resolution refunded Claimants hearing deposit to the extent of \$750.00

**Fee Summary**

Claimant is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 525.00
Total Fees	= \$ 825.00
Less payments	= \$ 825.00
Refund Due	= \$ 0.00

Respondent Merrill Lynch is liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 525.00
Total Fees	= \$ 5,725.00
Less payments	= \$ 5,725.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Karen Beattie is liable for:

Forum Fees	= \$ 525.00
Less payments	= \$ 525.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Andrea Calve, Esq.- Public Arbitrator, Chairperson  
Richard Roach- Public Arbitrator  
Robert E. Treadaway- Industry Arbitrator

**Concurring Arbitrators' Signature(s)**



Andrea Calve, Esq.  
Public Arbitrator, Chairperson

5-18-05

Signature Date

Richard Roach  
Public Arbitrator

Signature Date

Robert E. Treadaway  
Industry Arbitrator

Signature Date

6/30/05 RM

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Andrea Calve, Esq. – Public Arbitrator, Chairperson  
Richard Roach – Public Arbitrator  
Robert E. Treadaway – Industry Arbitrator

**Concurring Arbitrators' Signature(s)**

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Andrea Calve, Esq.  
Public Arbitrator, Chairperson

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Signature Date

  
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Richard Roach  
Public Arbitrator

5-18-05  
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Signature Date

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Robert E. Treadaway  
Industry Arbitrator

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Richard Roach— Public Arbitrator  
Robert E. Treadaway— Industry Arbitrator

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Public Arbitrator, Chairperson

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Signature Date

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Industry Arbitrator

  
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Date of Service (For NASD Dispute Resolution use only)

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05/10/05 TUE 11:02 FAX 214 745 5868 WSAM DALLAS FLOOR 85

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Arbitration No. 03-04490  
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AGREED:

  
Jeanne Crandall, Esq.

REYNA HINDS & CRANDALL

ATTORNEYS FOR ELGIN W. WARE AND  
KAREN G. WARE

  
John Kincade, Esq.

WINSTEAD SECHREST & MINICK, P.C.

ATTORNEYS FOR RESPONDENTS MERRILL LYNCH,  
PIERCE, FENNER & SMITH INCORPORATED  
AND KAREN BEATTIE