

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Margaret Gualtier (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith Inc. and Richard F. Sofka (Respondents)

Case Number: 03-04658

Hearing Site: Cleveland, Ohio

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

**REPRESENTATION OF PARTIES**

Claimant Margaret Gualtier ("Gualtier") hereinafter referred to as "Claimant": James J. Gutbrod, Esq., Akron, OH. Previously represented by Brian P. Biggins, Esq., Brian P. Biggins & Associates, Rocky River, Ohio.

Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") and Richard F. Sofka ("Sofka") hereinafter collectively referred to as "Respondents": Angela A. Turiano, Esq., Merrill Lynch, Pierce, Fenner & Smith Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 26, 2003.

Claimant signed the Uniform Submission Agreement: March 18, 2004.

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

Merrill Lynch signed the Uniform Submission Agreement: September 4, 2003.

Sofka signed the Uniform Submission Agreement: September 3, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence, breach of contract, breach of fiduciary duty, respondeat superior, failure to supervise, unsuitability, and omissions/misrepresentations.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$400,000.00 plus interest, punitive damages, costs, attorneys' fees, and such other and further relief as the Panel deems just and proper.

Respondents requested dismissal of the Statement of Claim in its entirety, that the Arbitration Panel issue an order that directs all references of this proceeding and the underlying complaint be expunged from the CRD records of Respondent Sofka, costs, and such other and further relief as is deemed just and proper.

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

On or about July 15, 2004 the parties informed NASD Dispute Resolution that the parties settled this matter on certain terms and conditions set forth in a confidential settlement agreement.

On or about March 20, 2006 Respondent submitted to NASD Dispute Resolution a Motion to Re-activate this matter for the purposes of submitting to the Panel a proposed Stipulated Award. By Order dated May 15, 2006 the Panel granted Respondent's Motion to Re-activate.

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

- 1) The parties have entered into a confidential settlement agreement.
- 2) Claimant's claims against Respondents are dismissed with prejudice.
- 3) The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Richard F. Sofka registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to Notices to Members 99-09 and 99-54, Respondent Sofka must obtain confirmation from a court of competent jurisdiction before the CRD will execute this 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, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. has received or will collect the non-refundable filing fees for each claim as follows:

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 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

#### **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 session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: January 9, 2004 1 session	
<b>Total Forum Fees</b>	<b>= \$ 1,125.00</b>

1. Pursuant to Rule 10306, Claimant is assessed \$375.00 of the forum fees.
2. Pursuant to Rule 10306, Respondent Merrill Lynch is assessed \$375.00 of the forum fees.
3. Pursuant to Rule 10306, Respondent Sofka is assessed \$375.00 of the forum fees.

### **Fee Summary**

1. Claimant is solely 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 initial amount of the hearing session deposited by the Claimant because this office was notified by the parties that they settled this matter within eight business days of the first scheduled hearing session.*

2. Merrill Lynch is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 5,575.00
Less payments	= \$ 5,575.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Sofka is solely liable for:

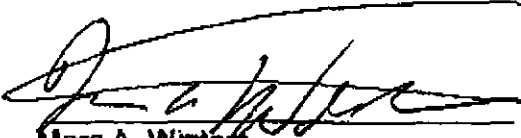
Forum Fees	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 375.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are due and payable to NASD Dispute Resolution.

**ARBITRATION PANEL**

Marc A. Winters	-	Public Arbitrator, Presiding Chairperson
Thomas H. Barnard, Jr., Esq.	-	Public Arbitrator
Norman W. Hadsell	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Marc A. Winters  
Public Arbitrator, Presiding Chairperson

5/22/06  
Date

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Thomas H. Barnard, Jr., Esq.  
Public Arbitrator

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Date

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Norman W. Hadsell  
Non-Public Arbitrator

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Date

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May 25, 2006  
Date of Service (For NASD office use only)

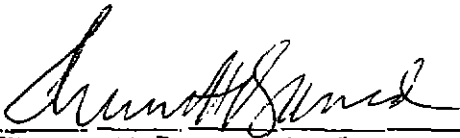
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Marc A. Winters  
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Date

  
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Thomas H. Barnard, Jr., Esq.  
Public Arbitrator

5/25/06  
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Date

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Norman W. Hadsell  
Non- Public Arbitrator

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6-1-06  
Date

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