

**Stipulated Award
NASD Dispute Resolution**

**ARBITRATION BEFORE
NASD DISPUTE RESOLUTION**

JOHN L. ALEXANDER and
TRACE L. ALEXANDER,

Claimants,

vs.

MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED and
R. KINNE KELL

Respondents.

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NASD Arbitration # 03-04691

REPRESENTATION OF PARTIES

Claimants John L. Alexander and Trace L. Alexander, hereinafter referred to as "Claimants," were represented by Robert Tobey, Esq., Johnston Tobey, P.C., 710 Founders Square, 900 Jackson Street, Dallas, Texas 75202.

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), R. Kinne Kell ("Kell"), and, prior to dismissal, Dodee Crockett ("Crockett") 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 20, 2003.

The Claimants signed the Uniform Submission Agreement on June 23, 2003.

The Respondents filed the Statement of Answer on or about September 12, 2003.

Respondents Merrill Lynch, R. Kinne Kell, and Dodee Crockett submitted a signed Uniform Submission Agreement on or about September 9, 2003.

The Claimants dismissed Respondent Dodee Crockett on April 7, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: Negligence and negligent misrepresentation, failure to supervise, breach of fiduciary duty, common law fraud, Texas statutory fraud, violations of the state and federal securities' laws and NASD Rules of Fair Practice and NYSE Rules; the Texas Deceptive Trade Practices Act, and breach of contract.

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	\$300,153.00
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 Respondents R. Kinne Kell's and Dodee Crockett's CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

The Claimants and Respondent Merrill Lynch settled this dispute. 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 Kell and Crockett's CRD records.

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 R. Kinne Kell are dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned complaint from Respondents R. Kinne Kell's and Dodee Crockett'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, Kell and Crockett must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. 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
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Total Forum Fees	= \$ 1,125.00
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The Panel has determined that Claimants and Respondents shall each bear one half of the forum fees in the amount of \$562.50 to Claimants, and \$562.50 to Respondent Merrill Lynch, Pierce,

Fenner & Smith, Inc., and Respondent Robert K. Kell.

Fee Summary

Claimant is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
<u>3-Day Cancellation Fee</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 1,575.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill Lynch is liable for:

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

Respondent Merrill Lynch and Robert K. Kell are jointly and severally liable for:

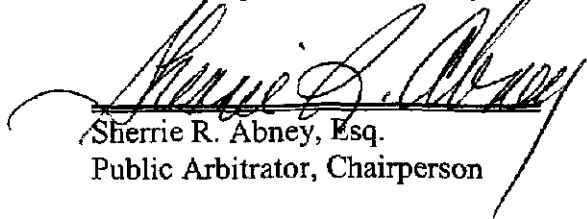
Forum Fees	= \$ 562.50
<u>3-Day Cancellation Fee</u>	<u>= \$ 150.00</u>
Total Fees	= \$ 712.50
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Refunded to Merrill Lynch by NASD Dispute Resolution	= \$ 712.50

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

ARBITRATION PANEL

Sherrie R. Abney, Esq. – Public Arbitrator, Chairperson
Harold Hunter – Public Arbitrator
Richard C. Corse – Industry Arbitrator

Concurring Arbitrators' Signature(s)



Sherrie R. Abney, Esq.
Public Arbitrator, Chairperson

7/15/05


Signature Date

Harold Hunter
Public Arbitrator

Signature Date

Richard C. Corse
Industry Arbitrator

Signature Date

7/19/05 

Date of Service (For NASD Dispute Resolution use only)


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Richard C. Corse – Industry Arbitrator

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Harold Hunter
Public Arbitrator



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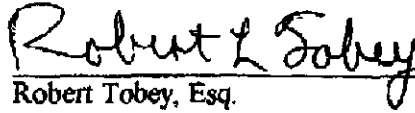
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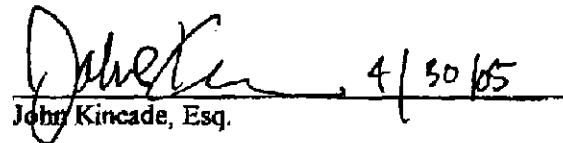
Date of Service (For NASD Dispute Resolution use only)

AGREED:


Robert Tobey, Esq.

JOHNSTON TOBEY P.C.

ATTORNEYS FOR CLAIMANTS


John Kincade, Esq.

WINSTEAD SECHREST & MINICK, P.C.

ATTORNEYS FOR RESPONDENTS MERRILL LYNCH,
PIERCE, FENNER & SMITH INCORPORATED, R. KINNE KELL
AND DODEE CROCKETT