

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Robin O. King  
Custodial Account for Stephanie King

Case Number: 03-05084

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Cynthia Clark

Hearing Site: Raleigh, NC

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

**REPRESENTATION OF PARTIES**

Claimants, Robin O. King and Custodial Account for Stephanie King, hereinafter collectively referred to as "Claimants", were represented by S. Ranchor Harris, Esq., Wilson & Iseman, L.L.P., Winston-Salem, North Carolina.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Cynthia Clark ("Clark"), hereinafter collectively referred to as "Respondents", were represented by S. Lawrence Polk, Esq. and Bryan M. Ward, Esq., Sutherland, Asbill & Brennan, LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on July 11, 2003.

Amended Statement of Claim filed on July 23, 2003.

Claimants signed the Uniform Submission Agreement on June 27, 2003.

Statement of Answer filed by Respondents on October 1, 2003.

A representative of Respondent Merrill Lynch signed the Uniform Submission Agreement on October 1, 2003.

Respondent Clark signed the Uniform Submission Agreement on August 22, 2003.

**CASE SUMMARY**

Claimants, in the Statement of Claim and Amended Statement of Claim, asserted the following causes of action, among others: breach of fiduciary duty, suitability, unauthorized trading, negligence, and failure to disclose material facts. The causes of action relate to the purchase and sale of various unspecified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; assumption of the risk; failure to mitigate damages; failure to exercise due care; Claimants' claims are barred by the doctrines of laches, waiver, estoppel and ratification; all trades were suitable and authorized by Claimant; contributory negligence; and,

Claimants' claims are barred by the statute of limitations.

**RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$ 89,000.00
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that the Arbitration Panel (the "Panel") enter an award rejecting Claimants' Statement of Claim in its entirety, that they be awarded all costs and attorneys' fees in connection with the arbitration, and that the Panel order the expungement of all reference to this matter from the Central Registration Depository ("CRD") record of Respondent Clark.

**OTHER ISSUES CONSIDERED AND DECIDED**

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**

Pursuant to the above, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That the parties have amicably resolved their differences and have requested this Stipulated Award;
2. That Claimants have dismissed their claims against Respondent Clark with prejudice and have settled and dismissed their claims against Respondent Merrill Lynch;
3. That the Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Clark's registration records maintained by the CRD with the understanding that, pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Clark must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
4. That each party shall bear its own costs and expenses, including attorneys' fees, except as Fees are specifically addressed below; and
5. That any and all relief not specifically addressed herein 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 = \$ 225.00

#### **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. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge = \$ 1,100.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 1,700.00

#### **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:

One (1) Pre-hearing session with Panel @ \$ 750.00 = \$ 750.00  
Pre-hearing conference: March 29, 2004 1 session  
Total Forum Fees = \$ 750.00

1. The Panel has assessed \$ 375.00 of the forum fees to Respondent Merrill Lynch.
2. The Panel has assessed \$ 375.00 of the forum fees to Respondent Clark.

### **Fee Summary**

1. Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee	= \$ 225.00
Total Fees	= \$ 225.00
Less payments	= \$ 995.00
Balance	= \$ 770.00
Less Remainder of Hearing Session Deposit Retained Pursuant to NASD Code of Arbitration Rule 10332f	= \$ 750.00
Refund owed Claimants	= \$ 20.00
2. Respondent Merrill Lynch is assessed and shall pay:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 3,925.00
Less payments	= \$ 3,550.00

Balance Due NASD Dispute Resolution = \$ 375.00

3. Respondent Clark is assessed and shall pay:

Forum Fees = \$ 375.00

Total Fees = \$ 375.00

Less payments = \$ 0.00

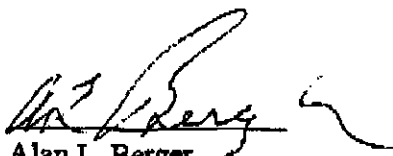
Balance Due NASD Dispute Resolution = \$ 375.00

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

ARBITRATION PANEL

Alan L. Berger	-	Public Arbitrator, Presiding Chairperson
Thomas W. Steed, Jr., Esq.	-	Public Arbitrator, Panelist
James W.A. Black	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**



Alan L. Berger  
Public Arbitrator, Presiding Chairperson

4-15-05  
Signature Date

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Thomas W. Steed, Jr., Esq.  
Public Arbitrator, Panelist

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Signature Date

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James W.A. Black  
Non-Public Arbitrator, Panelist

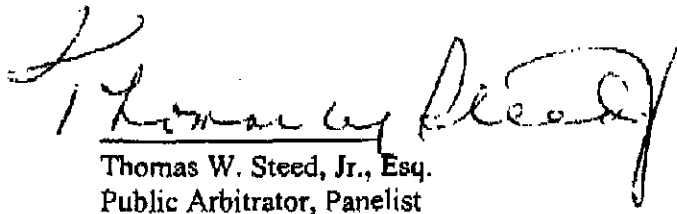
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April 21, 2005  
Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

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Thomas W. Steed, Jr., Esq.  
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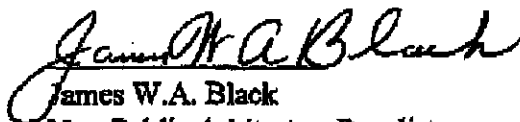
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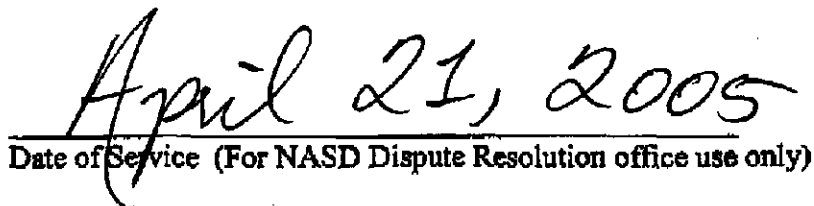
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