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

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-05482

Doyle Barentine  
Eva Lena Barentine  
Total Comfort Heating & Air  
Doyle Barentine, IRA  
Eva Lena Barentine, IRA

Names of the Respondents

Hearing Site: Little Rock, AR

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Stephen D. Hawkins

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

**REPRESENTATION OF PARTIES**

For Doyle Barentine, Eva Lena Barentine, Total Comfort Heating & Air, Doyle Barentine, IRA and Eva Lena Barentine, IRA, hereinafter collectively referred to as "Claimants": Larry W. Burks, Esq. and Karen Halbert, Esq., Friday, Eldredge & Clark, Little Rock, AR.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Stephen D. Hawkins ("Hawkins"), hereinafter collectively referred to as "Respondents": D. Michael O'Neill, Esq. and Robert J. Carlson, Esq., Day Edwards Propester & Christensen, P.C., Oklahoma City, OK.

**CASE INFORMATION**

Statement of Claim filed on or about: July 28, 2003.

Claimants signed the Uniform Submission Agreement: July 17, 2003.

Statement of Answer filed by Respondents on or about: October 17, 2003.

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

Respondent Hawkins did not file a signed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: I) negligence; II) constructive fraud; III) breach of fiduciary duty; IV) civil liability under Arkansas Securities Act; and, V) fraudulent concealment. The causes of action relate to the purchase of various mutual funds and common stock in Claimants' accounts including, but not limited to, the Blackrock Funds.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$15,000,000.00, pre and post-judgment interest at the maximum rate permitted by Arkansas law, punitive damages in the amount of \$50,000,000.00, costs, reasonable attorney's fees and such other relief this Panel deemed they may be entitled.

Respondents requested that the Statement of Claim be dismissed in its entirety, that fees and costs are assessed against Claimants and that the Panel enter an order expunging this matter from the Central Registration Depository (the "CRD") record of Respondent Hawkins.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Hawkins did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten Award may be entered.

**AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel found that the investments made on behalf of Claimants by Respondents for the five accounts at issue, beginning October 15, 1999, in the Blackrock Funds were unsuitable. With respect to the investments in the Blackrock Funds, the Panel found for Claimants on Count I (negligence) and Count IV (civil liability under the Arkansas Securities Act). The Panel found that all other investments made for the five accounts were suitable.

The Panel found that Claimants' claims of constructive fraud, breach of fiduciary duty and any claims for misrepresentation, fraudulent concealment, fraud and any other claim in the Statement of Claim are without merit and should be dismissed, with prejudice.

Respondents are found liable for negligence and civil liability under the Arkansas Securities Act and Respondent Merrill Lynch shall pay to Claimants compensatory damages in the amount of \$145,996.00, interest specifically excluded.

Respondents are liable and Respondent Merrill Lynch shall pay to Claimants attorneys' fees in the amount of \$58,398.00, costs in the amount of \$25,000.00 and expert witness fees in the amount of \$22,000.00.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, is denied.

### **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 = \$ 600.00

#### **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 to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge = \$ 3,750.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 5,500.00

#### **Adjournment Fees**

Adjournment granted in this matter:

September 8 – 10, 2004, adjournment requested by Claimants = \$ 1,200.00

The Panel has assessed the total adjournment fee of \$1,200.00 jointly and severally to Claimants.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were assessed in this matter.

#### **Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

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

The Panel has assessed forum fees for each session conducted. A 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 session with a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: October 6, 2004 1 session

Three (3) Pre-hearing sessions with the Panel @ \$1,200.00 = \$ 3,600.00  
Pre-hearing conferences: January 12, 2004 1 session

August 19, 2004 1 session  
September 8, 2004 1 session

Twelve (12) Hearing sessions with the Panel @ \$1,200.00 = \$14,400.00

Hearing Dates: June 28, 2005 2 sessions  
June 29, 2005 2 sessions  
June 30, 2005 2 sessions  
July 1, 2005 2 sessions  
October 4, 2005 2 sessions  
October 5, 2005 2 sessions

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Total Forum Fees = \$18,450.00

The Panel has assessed \$13,837.50 of the forum fees jointly and severally to Claimants.  
The Panel has assessed \$4,612.50 of the forum fees to Respondent Merrill Lynch.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Administrative costs were incurred during this proceeding.

Costs incurred by Claimants: conference room for additional day and special equipment = \$ 401.00

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 1,200.00
Administrative Costs	= \$ 401.00
Forum Fees	= \$ 13,837.50
Total Fees	= \$ 16,038.50
<u>Less payments</u>	= \$ 1,900.00
Balance Due NASD Dispute Resolution	= \$ 14,138.50

Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 10,000.00
Forum Fees	= \$ 4,612.50
Total Fees	= \$ 14,612.50
<u>Less payments</u>	= \$ 10,000.00
Balance Due NASD Dispute Resolution	= \$ 4,612.50

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

**ARBITRATION PANEL**

*Angelia J. Tolbert, Esq.*

*Melva J. Harmon, Esq.*

*Rudy A. Martin, Jr.*

*Public Arbitrator, Presiding Chairperson*

### Public Arbitrator

### *Non-Public Arbitrator*

### Concurring Arbitrators' Signatures

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Angelia J. Tolbert, Esq.

Public Arbitrator, Presiding Chairperson

10/10/05

Signature Date

/s/

Melva J. Harmon, Esq.

## Public Arbitrator

10/10/05

Signature Date

**/S/**

Rudy A. Martin, Jr.

### Non-Public Arbitrator

10/11/05

Signature Date

10/11/05

**Date of Service (For NASD Dispute Resolution office use only)**

FROM :NASD

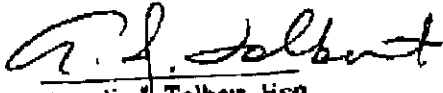
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Melva J. Harmon, Esq.  
Rudy A. Martin, Jr.

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Angelina J. Tolbert, Esq.  
Public Arbitrator, Presiding Chairperson

October 10, 2005  
Signature Date

Melva J. Harmon, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

Rudy A. Martin, Jr.  
Non-Public Arbitrator

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- Public Arbitrator  
- Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

Signature Date

Melva J. Harmon

Melva J. Harmon, Esq.  
Public Arbitrator

October 10, 2005

Signature Date

Rudy A. Martin, Jr.  
Non-Public Arbitrator

Signature Date

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Melva J. Harmon, Esq.	-	Public Arbitrator
Rudy A. Martin, Jr.	-	Non-Public Arbitrator

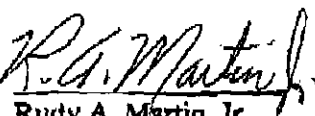
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Public Arbitrator, Presiding Chairperson

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Public Arbitrator

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