

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Connie J. Schafer

and

03-06074  
Chicago, Illinois

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith Inc. and  
Wallace E. Almquist, Jr.

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

**REPRESENTATION OF PARTIES**

Connie J. Schafer ("Claimant") was represented by Rachel M. Raymon, Esq., Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A., Pensacola Florida.

Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") and Wallace E. Almquist, Jr. ("Almquist"), hereinafter collectively referred to as "Respondents", were represented by Luther M. Dorr, Jr., Maynard, Cooper and Gale, P.C., Birmingham, Alabama.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 21, 2003. The Submission Agreement of Claimant was signed on or about February 24, 2003.

The Statement of Answer was filed by Respondents on or about November 3, 2003. The Submission Agreement of Respondent Merrill Lynch was signed on or about October 3, 2003 by V. James Mann, Esq. Respondents filed Amended Answers on November 19, 2004 and December 10, 2004.

**CASE SUMMARY**

Claimant asserted claims against Respondents for (1) breach of fiduciary duty; (2) fraud; (3) negligent misrepresentation; (4) negligence; and (5) violation of blue-sky laws.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that (1) Claimant's account were properly allocated according to her investment objectives and instructions; (2) Respondents did not recommend unsuitable investments to Claimant; (3) Claimant's

allegations failed to satisfy the elements of a cause of action for fraud at either common-law or under Illinois blue-sky laws; and (4) Respondents did not breach any duties owed to Claimant.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$200,000.00 for compensatory damages, as well as an unspecified amount of punitive damages, interest, costs, and attorneys' fees.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Wallace E. Almquist, Jr. did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim is bound by the determination of the arbitration panel on all issues submitted.

*The parties advised NASD Dispute Resolution that they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.*

The confidential settlement agreement included a stipulation that Claimant's complaint should be expunged from the CRD registration records of Respondent Almquist.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies. The parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the pleadings and the stipulation of the parties, but without making any findings of fact or conclusions of law, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination and find as follows:

1. Claimant's withdrawal of her claims is accepted and Respondents are dismissed from this matter with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Wallace E. Almquist, Jr.'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, Respondent Wallace E. Almquist must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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

#### **Member Fees**

*Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Merrill Lynch, Pierce, Fenner & Smith, Inc.*

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

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

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

1 Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
May 11, 2004	1	session		
Total Forum Fees			\$	1,125.00

The Arbitration Panel has assessed \$375.00 of the forum fees to Connie J. Schafer.

The Arbitration Panel has assessed \$375.00 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith, Inc.

The Arbitration Panel has assessed \$375.00 of the forum fees to Wallace E. Almquist, Jr.

**Fee Summary**

Claimant, Connie J. Schafer, is liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	375.00
Total Fees	= \$	675.00
<u>Less payments</u>	= \$	-1,425.00
Balance to be refunded by NASD Dispute Resolution	= \$	- 750.00

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. , is liable for:

Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	375.00
Total Fees	= \$	5,575.00
<u>Less payments</u>	= \$	-5,950.00
Balance to be refunded by NASD Dispute Resolution	= \$	- 375.00

Respondent, Wallace E. Almquist, Jr. is liable for:

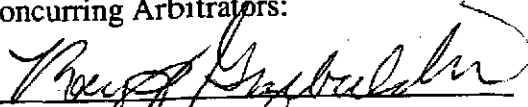
<u>Forum Fees</u>	= \$	375.00
Total Fees	= \$	375.00
<u>Less payments</u>	= \$	-375.00
Balance Due NASD Dispute Resolution	= \$	0.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Ray J. Grzebielski, Esq. - Public Arbitrator, Presiding Chair  
Richard S. Bakka - Public Arbitrator  
Allan H. Marx - Non-Public Arbitrator

Concurring Arbitrators:

  
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Ray J. Grzebielski, Esq.  
Public Arbitrator, Presiding Chair

10/18/05  
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Signature Date

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Richard S. Bakka  
Public Arbitrator

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Signature Date

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Allan H. Marx  
Non-Public Arbitrator

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Signature Date

8/1/06  
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Date of Service (For NASD office use only)

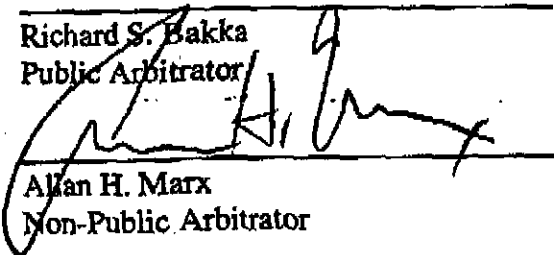
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Ray J. Grzebielski, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Richard S. Bakka  
Public Arbitrator

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Signature Date

  
Allan H. Marx  
Non-Public Arbitrator

10/24/05  
Signature Date

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Date of Service (For NASD office use only)