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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Tamara Baroni

Case Number: 03-06281

Name of the Respondent  
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Tamara Baroni, hereinafter referred to as "Claimant": Howard R. Behar, Esq., Howard R. Behar, P.A., Aventura, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Keith Olin, Esq. and Jill Dokson, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: August 29, 2003.

Claimant signed the Uniform Submission Agreement: August 27, 2003.

Statement of Answer filed by Respondent on or about: December 5, 2003.

Respondent did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of Section 517.301 of the Florida Statutes; failure to supervise; breach of fiduciary duty; violation of Article III, Section 2 of the NASD Rules of Fair Practice; violation of NYSE Rule 405; and, negligence. The causes of action relate to the purchases and sales of unspecified securities products in Claimant's MLAM Large-Cap Relative Value account and Claimant's Roger Engemann Large/Cap/Grw/Equity managed account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in excess of \$200,000.00 but less than \$500,000.00, interest, costs, punitive damages, a specific finding that Respondent is liable pursuant to Chapter 517 of the Florida Statutes and any other relief deemed just and proper.

Respondent requested that the Panel enter an Award dismissing Claimant's claims in their entirety and granting any other relief deemed just and proper. In addition, Respondent asserted

that it intended to seek attorney's fees and costs from a court of competent jurisdiction pursuant to Sections 57.105 and 517.211(6) of the Florida Statutes.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent 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 determinations of the Panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

**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:

Respondent is liable on the claims of failure to supervise and negligence and shall pay to Claimant compensatory damages in the amount of \$10,000.00, prejudgment interest specifically excluded.

Respondent is liable and shall pay to Claimant the sum of \$150.00 representing reimbursement of one-half of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Each party to bear their own fees and costs.

Any and all claims for relief not specifically addressed herein, including Claimant's requests for punitive damages and for damages pursuant to Chapter 517 of the Florida Statutes, are 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	= \$ 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 at the time of the events giving rise to the dispute. In this matter, the member firm 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

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

**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 three-day cancellation fees were incurred in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

**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 the Panel @ \$1,125.00		= \$1,125.00
Pre-hearing conference:	March 8, 2004	1 session
Six (6) Hearing sessions @ \$1,125.00		= \$6,750.00
Hearing Dates:	January 12, 2005	2 sessions
	January 13, 2005	2 sessions
	January 14, 2005	2 sessions
Total Forum Fees		= \$7,875.00

The Panel has assessed \$3,937.50 of the forum fees to Claimant.

The Panel has assessed \$3,937.50 of the forum fees to Respondent.

**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 are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,937.50
<u>Total Fees</u>	= \$ 4,237.50
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 2,812.50

Respondent is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,937.50
<u>Total Fees</u>	= \$ 9,137.50
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 3,937.50

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

**ARBITRATION PANEL**

Lawrence Alan Saichek, Esq.	-	Public Arbitrator, Presiding Chairperson
Lee E. Karofsky, JD	-	Public Arbitrator
George D. Lambert, III	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/	01/27/05
_____ Lawrence Alan Saichek, Esq. Public Arbitrator, Presiding Chairperson	_____ Signature Date
/s/	01/28/05
_____ Lee E. Karofsky, JD Public Arbitrator	_____ Signature Date
/s/	01/27/05
_____ George D. Lambert, III Non-Public Arbitrator	_____ Signature Date

01/31/05

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

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Public Arbitrator

1/28/05  
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