

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

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In the Matter of the Arbitration Between:

The Estate of Robert L. Graef (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,  
Raymond Miranda, and Bank One Columbus, N.A. (Respondents)

Case Number: 03-06490

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant The Estate of Robert L. Graef ("The Estate") hereinafter referred to as "Claimant":  
Loretta M. Gastwirth, Esq., Meltzer, Lippe & Goldstein, LLP, Mineola, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Raymond Miranda  
("Miranda") and Bank One Columbus, N.A. ("Bank One") hereinafter collectively referred to as  
"Respondents": Ethan Leonard, Esq., The Law Offices of Neal Brickman, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 5, 2003.

Memorandum of Law in Opposition to Respondents' Motion to Dismiss filed on or about:  
January 27, 2004.

Claimant signed the Uniform Submission Agreement: August 29, 2003.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: December  
1, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: November 26, 2003.

Respondent Miranda signed the Uniform Submission Agreement: November 26, 2003.

Respondent Bank One signed the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of federal and state securities laws;  
unauthorized trading; failure to supervise; breach of fiduciary duty; forgery; and negligence. The  
causes of action relate to unspecified securities.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$150,000.00; refunds of margin interest, commissions, and management fees charged to the accounts; injunctive relief directing Merrill Lynch to release the accounts and remove the margin loans; interest; punitive damages; reasonable attorneys' fees, costs, and disbursements; and such other and further relief as the Arbitrators deem appropriate.

Respondents requested dismissal of the complaint in its entirety; expunging each and every allegation of wrongdoing from Respondent Miranda's record; costs, disbursements, and attorneys' fees; and such other and further relief as the Panel deems just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On the first day of the hearing, the Panel granted Respondent Bank One's motion to dismiss.

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

### **AWARD**

After considering the pleadings, and 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:

1. Respondents Merrill Lynch and Miranda are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$148,000.00, plus interest at the rate of 9% per annum from the date of the award to the payment of the award.
2. Any and all relief not specifically addressed herein, including 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	= \$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. Accordingly, 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

**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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: April 15, 2004 1 session	
June 28, 2004 1 session	

Eight (8) Hearing sessions @ \$1,125.00	= \$ 9,000.00
Hearing Dates: November 8, 2004 2 sessions	
November 9, 2004 2 sessions	
November 10, 2004 2 sessions	
December 10, 2004 2 sessions	

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Total Forum Fees	= \$11,250.00
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1. The Panel has assessed \$11,250.00 of the forum fees jointly and severally against Respondents Merrill Lynch and Miranda.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Refund Due Claimant	= \$ 1,125.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Forum Fees	= \$11,250.00
Total Fees	= \$11,250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$11,250.00


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

**ARBITRATION PANEL**

Eric P. Nachman, Esq.	-	Public Arbitrator, Presiding Chairperson
Ralph A. Gant, Esq.	-	Public Arbitrator
Daniel F. Morrissey	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
\_\_\_\_\_  
Eric P. Nachman, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Ralph A. Gant, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Daniel F. Morrissey  
Non-Public Arbitrator

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

December 22, 2004  
Date of Service (For NASD Dispute Resolution use only)

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Signature Date

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*Ralph A. Gant*  
Ralph A. Gant, Esq.  
Public Arbitrator

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*12/21/04*  
Signature Date

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Daniel F. Morrissey  
Non-Public Arbitrator

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Signature Date

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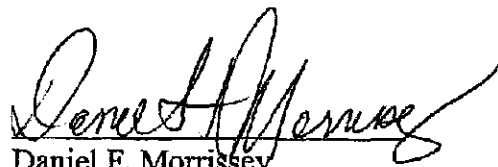
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Ralph A. Gant, Esq.  
Public Arbitrator

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Daniel F. Morrissey  
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12-17-04  
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Signature Date

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