

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Donna J. Kalisz

and

Case Number: 03-08967  
Hearing Site: Chicago, Illinois

Respondent

Merrill, Lynch, Pierce, Fenner & Smith,  
Incorporated

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**NATURE OF DISPUTE**

Customer v. Member

**REPRESENTATION OF PARTIES**

Donna J. Kalisz ("Claimant") was represented by Jo Ann Gryder, Esq., The Law Office of Jo Ann Gryder, Esq., Yorkville, Illinois.

Merrill, Lynch, Pierce, Fenner & Smith, Incorporated ("MLPFS") was represented by Alan S. Rafterman, Esq., Merrill, Lynch, Pierce, Fenner & Smith, Incorporated, New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 20, 2004. The Submission Agreement of Kalisz was signed on or about April 6, 2005.

The Statement of Answer was filed by MLPFS on or about July 27, 2005. The Submission Agreement of MLPFS was signed on or about July 26, 2005.

**CASE SUMMARY**

Claimant asserted the following cause of action: Claimant did not provide Respondent with permission to trade on margin. The cause of action relates to Claimant's allegations that Respondent failed to notify her of a margin account and Respondent's failure to purchase securities including CISCO.

Unless specifically admitted in its Answer, MLPFS denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the claim

fails to state a cause of action upon which relief may be granted and Respondent never recommended an investment for Claimant's accounts without discussing both its risks and its potential reward characteristics with Claimant.

On or about June 8, 2006, Respondent filed a Motion for an Order Precluding Claimant from Presenting Any Evidence at the Hearing.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$35,000.00
Punitive Damages	\$15,000.00
Interest	unspecified

Respondent requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs, and attorneys' fees and any other relief the panel deemed appropriate.

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

On or about June 8, 2006, the Chairperson deferred decision on Respondent's Motion for an Order Precluding Claimant from Presenting Any Evidence at the Hearing pending arguments from the parties before the full panel during the hearing. At the hearing on June 14, 2006, the panel denied Respondent's Motion.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

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

- 1.) Respondent, Merrill, Lynch, Pierce Fenner & Smith, Incorporated, is liable for and shall pay to Claimant, Donna J. Kalisz, the sum of \$10,000.00 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and

- 3.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **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 (waived by NASD) = \$ 175.00

#### **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 event giving rise to the dispute. In this matter, the member firm is Merrill, Lynch, Pierce Fenner & Smith, Incorporated.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,000.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

March 1-3, 2006, adjournment requested by MLPFS = \$ 600.00  
and assessed equally between the parties.

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

The Panel has assessed forum fees for each hearing session conducted and each decision rendered on a discovery-related motion on the papers. A hearing 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) Decision on a discovery-related motion on the papers  
with one (1) arbitrator @ \$200.00 = \$ 200.00

MLPFS submitted one (1) discovery-related motion

One (1) Pre-hearing session with Panel x \$600.00	= \$ 600.00
Pre-hearing conference: July 25, 2005 1 session	
Two (2) Hearing sessions x \$600.00	= \$ 1,200.00
Hearing Date: June 14, 2006 2 sessions	
Total Forum Fees	= \$ 2,000.00

The Arbitration Panel has assessed \$1,000.00 of the forum fees to Donna J. Kalisz.  
The Arbitration Panel has assessed \$1,000.00 of the forum fees to Merrill, Lynch, Pierce  
Fenner & Smith, Incorporated.

#### Fee Summary

Claimant, Donna J. Kalisz, is liable for:

Adjournment Fee	= \$ 300.00
Forum Fees	= \$ 1,000.00
Total Fees	= \$ 1,300.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,300.00

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

Member Fees	= \$ 2,625.00
Adjournment Fee	= \$ 300.00
Forum Fees	= \$ 1,000.00
Total Fees	= \$ 3,925.00
Less payments	= \$ 2,625.00
Balance Due NASD Dispute Resolution	= \$ 1,300.00

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

**ARBITRATION PANEL**

Robert Charkovsky, Esq. - Public Arbitrator, Presiding Chair  
Woodrow A. Sutton, Jr. - Public Arbitrator  
John Demarest Diefenbach - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert Charkovsky, Esq.  
Robert Charkovsky, Esq.  
Public Arbitrator, Presiding Chair

June 17, 2006  
Signature Date

/s/ John Demarest Diefenbach  
John Demarest Diefenbach  
Non-Public Arbitrator

June 16, 2006  
Signature Date

Dissenting Arbitrator:

/s/ Woodrow A. Sutton, Jr.  
Woodrow A. Sutton, Jr.  
Public Arbitrator

June 21, 2006  
Signature Date

June 22, 2006  
Date of Service (For NASD office use only)

ARBITRATION PANEL

Robert Charkovsky, Esq. - Public Arbitrator, Presiding Chair  
Woodrow A. Sutton, Jr. - Public Arbitrator  
John Demarest Diefenbach - Non-Public Arbitrator

Concurring Arbitrators:

Robert Charkovsky

Robert Charkovsky, Esq.  
Public Arbitrator, Presiding Chair

June 17, 2006  
Signature Date

John Demarest Diefenbach  
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator:

Woodrow A. Sutton, Jr.  
Public Arbitrator

Signature Date

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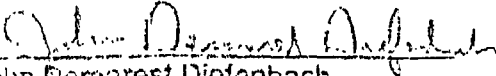
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Robert Charkovsky, Esq. - Public Arbitrator, Presiding Chair  
Woodrow A. Sutton, Jr. - Public Arbitrator  
John Demarest Diefenbach - Non-Public Arbitrator

Concurring Arbitrators:

Robert Charkovsky, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

  
John Demarest Diefenbach  
Non-Public Arbitrator

6-16-06  
Signature Date

Dissenting Arbitrator:

Woodrow A. Sutton, Jr.  
Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Concurring Arbitrators:

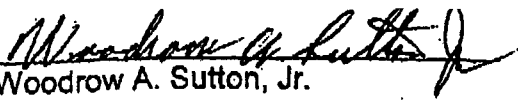
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Robert Charkovsky, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Non-Public Arbitrator

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Dissenting Arbitrator:

  
Woodrow A. Sutton, Jr.  
Public Arbitrator

  
Signature Date

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Date of Service (For NASD office use only)