

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Adele S. Roth IRA FBO Adele S. Roth

Case Number: 04-03416

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
James M. Raduolic, Sr.

Hearing Site: Raleigh, North Carolina

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

**REPRESENTATION OF PARTIES**

Claimant, Adele S. Roth IRA FBO Adele S. Roth, hereinafter referred to as "Claimant", was represented by Mathew E. Bates, Esq., Mathew E. Bates, P.A., Greensboro, North Carolina.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and James M. Raduolic, Sr. ("Raduolic"), hereinafter collectively referred to as "Respondents", were represented by Brian A. Comer, Esq., Nelson Mullins Riley & Scarborough, LLP, Columbia, South Carolina.

**CASE INFORMATION**

Statement of Claim filed on May 10, 2004.

Claimant signed the Uniform Submission Agreement on April 29, 2004.

Statement of Answer filed by Respondents on August 2, 2004.

Amended Statement of Answer filed by Respondents on November 2, 2004.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on July 27, 2004.

Respondent Raduolic signed the Uniform Submission Agreement on July 28, 2004.

Respondents filed a Motion to Dismiss on May 25, 2005.

Response to Motion to Dismiss and Claimant's Motion for Sanctions filed by Claimant on June 9, 2005.

Response to Motion for Sanctions filed by Respondents on July 6, 2005.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action, among others: failure to supervise, breach of fiduciary duty, suitability and fraud. The causes of action relate to the purchase and sale of various technology stocks and mutual funds, including but not limited to, Applied Materials, AOL Time Warner, Broadcom, Munder Net Net Fund and Pimco P Innovation Fund.

Unless specifically admitted in their Statement of Answer and Amended Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: contributory negligence; failure to state a claim upon which relief may be granted; ratification; authorization; assumption of the risk; Claimants' claims are barred by the doctrines of waiver, laches and estoppel; failure to exercise due diligence; failure to allege; and Claimants' claims are barred by the statute of limitations.

### **RELIEF REQUESTED**

Claimants in the Statement of Claim requested:

Compensatory Damages	\$ 140,385.00
Punitive Damages	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that Claimants' Statement of Claim be dismissed with prejudice, that they be awarded costs and expenses in defending the claim, and that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from Respondent Radulovic's Central Registration Depository ("CRD") record.

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

On July 20, 2005, the Panel denied both Respondents' Motion to Dismiss and Claimant's Motion for Sanctions.

The parties 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, 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. Claimant's claims are denied in their entirety;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Radulovic's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Radulovic must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the Panel has made the following affirmative findings of fact:

The claim, allegation, or information is false.

3. The parties shall bear their respective costs, except as Fees are specifically addressed below;  
and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### **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, Respondent Merrill Lynch 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel @ \$ 1,125.00	= \$ 3,375.00
Pre-hearing conferences:	
January 19, 2005	1 session
February 16, 2005	1 session
June 7, 2005	1 session
Three (3) Hearing sessions @ \$ 1,125.00	= \$ 3,375.00
Hearing Dates:	
August 9, 2005	2 sessions
August 10, 2005	1 session
Total Forum Fees	= \$ 6,750.00

1. The Panel has assessed \$ 4,725.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 2,025.00 of the forum fees to Respondent Merrill Lynch.

**Fee Summary**

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,725.00
Total Fees	= \$ 5,025.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

2. Respondent Merrill Lynch is assessed and shall pay:

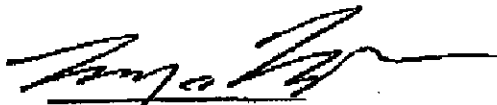
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 2,025.00
Total Fees	= \$ 7,225.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 2,025.00

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

**ARBITRATION PANEL**

Larry A. Feldman	-	Public Arbitrator, Presiding Chairperson
Chase Boone Saunders	-	Public Arbitrator, Panelist
James W.A. Black	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**



Larry A. Feldman  
Public Arbitrator, Presiding Chairperson

8-11-05

Signature Date

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Chase Boone Saunders  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
James W.A. Black  
Non-Public Arbitrator, Panelist

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

August 12, 2005  
Date of Service (For NASD Dispute Resolution office use only)

**Concurring Arbitrators' Signatures**

**Larry A. Feldman**  
**Public Arbitrator, Presiding Chairperson**

**Signature Date**

Chase Boone Saunders  
Chase Boone Saunders  
Public Arbitrator, Panelist

8/11/05  
Signature Date

**James W.A. Black**  
**Non-Public Arbitrator, Panelist**

**Signature Date**

August 12, 2005

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

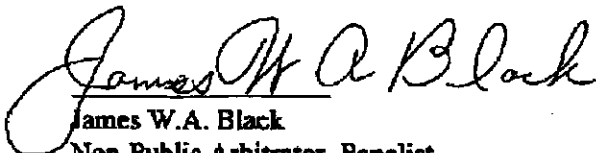
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Public Arbitrator, Presiding Chairperson

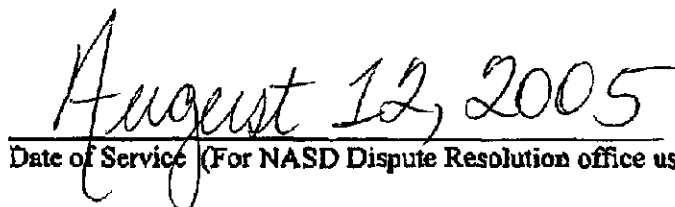
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