

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

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CASE: 04-04172

Susan E. Michalsen IRRA, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Angela Rose Zollner, Jeffry Diacono, and Rhonda K. Wolfe, Respondents

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**ATTORNEYS:**

Claimant Susan E. Michalsen IRRA ("Claimant") appeared *pro se*, Asheville, NC.

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Angela Rose Zollner, Jeffry Diacono, and Rhonda K. Wolfe (collectively "Respondents") appeared John Thomas Viti, Esq., in-house counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

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**NATURE OF DISPUTE:** Customer v. Member and Associated Persons.

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**DATE FILED:** June 14, 2004.

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**CASE SUMMARY:** Claimant alleged that Respondents removed assets from her account and has failed to provide her with an explanation or to return the assets. Claimant maintained that due to Respondents' actions, her account suffered losses. Claimant's claim involved the Merrill Lynch Lee Acquisition Fund LP 87.

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**Claim Data**

Claim: \$7,892.70  
Interest: Unspecified  
Filing Fees: \$0.00

**Award Data**

Award: \$2,600.00  
Interest: 9% fr. 2/2/95-payment  
Filing Fees: \$325.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of Claimant against Respondents Angela Rose Zollner, Jeffry Diacono, and Rhonda K. Wolfe are dismissed in their entirety. 2) Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for and shall pay to the Claimant \$2,600.00. 3) Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for and shall pay to the Claimant interest at the rate of 9% per annum from February 2, 1995 through the date of payment of the award. 4) All other relief requests are denied. 5) NASD Dispute Resolution shall retain the \$325.00 filing fee that the Claimant deposited previously. 6) Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for and shall pay Claimant \$325.00 as reimbursement of the filing fee. 7) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Angela Rose Zollner's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Angela Rose Zollner 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 arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is factually impossible or

clearly erroneous. 8) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Jeffry Diacono's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Jeffry Diacono 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 arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is factually impossible or clearly erroneous. 9) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Rhonda K. Wolfe's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Rhonda K. Wolfe 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 arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is factually impossible or clearly erroneous.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. has paid to NASD Dispute Resolution the \$325.00 Member Surcharge previously invoiced.

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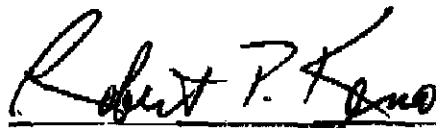
**OTHER ISSUES:** 1) The customer dispute information against Respondents Zollner, Diacono, and Wolfe is clearly erroneous and is to be expunged. 2) The Rule 10304 six year time limit did not commence until Merrill Lynch, Pierce, Fenner & Smith, Inc. employee, Peters, reported to Claimant in 2002. 3) Respondents' Motions for Definite Statement of Claim, Ineligibility, and Dismissal are denied.

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ARBITRATOR  
Robert P. Keno - Sole Public Arbitrator

AFFIRMATION

Robert P. Keno, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

  
Robert P. Keno

  
Signature Date:

March 11, 2005  
Date of Service (For NASD-DR office use only)