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

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In the Matter of the Arbitration Between:

Name of the Claimant

Ruth L. Gillingham

Case Number: 04-04609

Names of the Respondents

Lawrence L. Miller  
Michael J. Miller, CPA  
Miller Financial Group, LLC  
Medallion Investment Services, Inc.

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Ruth L. Gillingham, hereinafter referred to as "Claimant": Grafton N. Carlson, Esq., Grafton N. Carlson, P.A., Ft. Lauderdale, Florida.

For Respondents Lawrence L. Miller ("LM"), Michael J. Miller, CPA ("MM") and Miller Financial Group, LLC ("MFG"): William J. Johnson, Jr., Esq., Green, Murphy & Murphy, PA, Ft. Lauderdale, Florida.

For Respondent Medallion Investment Services, Inc. ("MIS"): Brian S. Hamburger, Esq., Hamburger Law Firm, LLC, Teaneck, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on or about: June 28, 2004.

Claimant signed the Uniform Submission Agreement: June 25, 2004.

Statement of Answer filed by Respondents LM, MM and MFG on or about: August 20, 2004.

Respondents LM, MM and MFG signed the Uniform Submission Agreements: August 16, 2004.

Statement of Answer filed by Respondent MIS on or about: August 20, 2004.

Respondent MIS signed the Uniform Submission Agreement: August 24, 2004.

Brief and Motion for Dismissal of Counts VIII and IX of the Statement of Claim filed by Respondents LM, MM and MFG on or about: April 5, 2005.

Reply Brief in Response to Brief and Motion for Dismissal of Counts VIII and IX of the Statement of Claim filed by Claimant on or about: April 14, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action against Respondents: fraud ("Count I"); negligence ("Count II"); intentional breach of fiduciary duty ("Count III"); negligent misrepresentation ("Count IV"); negligent breach of fiduciary duty ("Count V"); unsuitability ("Count VI"); and, violation of Chapter 517 of the Florida Statutes ("Count VII"). Claimant further asserted the cause of action of professional negligence against Respondents LM ("Count VIII") and MM ("Count IX"). The causes of action relate to the purchase in Claimant's account of the following mutual funds: AIM Weingarten Fund-B; AIM Charter Fund-B; and, Aim Intermediate Government Bond Fund-B.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$197,000.00, punitive damages in the amount of \$50,000.00, interest, costs (including forum fees, witness and production fees and other case-related costs), and an award of attorneys' fees with an explanation of the legal basis for such award.

Respondents LM, MM and MFG requested that the Statement of Claim be dismissed and that the Panel enter an award in their favor and against Claimant.

Respondent MIS requested that the Panel enter an award denying Claimant's claim in its entirety; providing for reimbursement to Respondent MIS for its expenses in defending this claim, comprised of attorneys' fees, arbitration fees and other related expenses, including the member surcharge imposed by NASD Dispute Resolution; and, awarding Respondent MIS such other and further relief as Respondent MIS may be entitled to in law or equity or as otherwise deemed just and proper under the circumstances.

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

Respondent MIS is a non-member of NASD. Respondent MIS submitted to arbitration having filed a Statement of Answer and executed Uniform Submission Agreement. Therefore, Respondent MIS is bound by all determinations made by the Panel.

Respondents LM, MM and MFG filed a Brief and Motion for Dismissal of Counts VIII and IX of the Statement of Claim which asserted that under Florida's Doctrine of Judgmental Immunity, Respondents LM, MM and MFG cannot be held liable for professional negligence for failure to accurately predict changes on an unsettled point of law. In her response, Claimant asserted, among other things, that the facts under which the Doctrine of Judgmental Immunity operate are not applicable to Respondents. On or about April 21, 2005, the Panel issued an Order granting Respondents' LM, MM and MFG's motion.

During the evidentiary hearing, Claimant and Respondents each moved to conform the pleadings to the proof. The Panel granted the parties' motions.

During the evidentiary hearing, at the conclusion of Claimant's case-in-chief, Respondents moved to dismiss Counts I (fraud), III (intentional breach of fiduciary duty) and VI (unsuitability) of the Statement of Claim. The Panel granted Respondents' motion.

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, and all post-hearing submissions submitted by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

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All claims asserted against Respondent MFG are dismissed, with prejudice.

Respondents LM, MM and MIS are jointly and severally liable on Count II, negligence, and shall pay to Claimant compensatory damages in the amount of \$131,441.00, plus interest at the Florida statutory rate, accruing from the date of service of this award through payment of the award to Claimant.

Respondents LM, MM and MIS are jointly and severally liable and shall reimburse Claimant the sum of \$300.00, representing the non-refundable claim filing fee paid by Claimant to NASD Dispute Resolution.

All other claims for relief not specifically addressed herein, including Claimant's claims for relief pursuant to Chapter 517 of the Florida Statutes, and Claimant's request for attorneys' fees, are denied.

### FEES

Pursuant to the NASD Code of Arbitration Procedure (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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MIS is a member firm and a party.

Member Surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

#### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were requested 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.

Three-day cancellation fees were not assessed 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.

Injunctive relief fees were not assessed 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: December 13, 2004 1 session	
Eight (8) Hearing sessions @ \$1,125.00/session	= \$9,000.00
Hearing Dates: April 27, 2005 3 sessions	
April 28, 2005 2 sessions	
April 29, 2005 3 sessions	
Total Forum Fees	= \$9,450.00

The Panel has assessed the total forum fees of \$9,450.00 to Respondents LM, MM and MIS, jointly and severally.

**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.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less Payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MIS is solely liable for:

<u>Member Fees</u>	= \$5,200.00
Total Fees	= \$5,200.00
<u>Less Payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents LM, MM and MIS are jointly and severally liable for:

<u>Forum Fees</u>	= \$9,450.00
Total Fees	= \$9,450.00
<u>Less Payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$9,450.00

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

**ARBITRATION PANEL**

Jay E. Eckhaus, Esq.	-	Public Arbitrator, Presiding Chairperson
Barry K. Thorpe, Esq.	-	Public Arbitrator
Bernard L. Loring	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Jay E. Eckhaus, Esq.  
Public Arbitrator, Presiding Chairperson

June 24, 2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Barry K Thorpe, Esq.  
Public Arbitrator

June 23, 2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Bernard L. Loring  
Non-Public Arbitrator

June 24, 2005  
Signature Date

June 24, 2005  
Date of Service (For NASD Dispute Resolution office use only)

JUN. 23. 2005 4:56PM

NASD REGULATIONS

NO. 165 P. 6/6

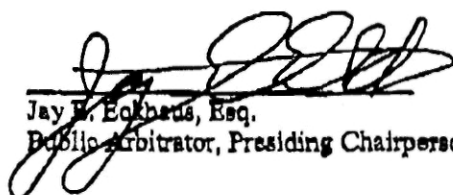
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Barry K. Thorpe, Esq.  
Bernard L. Loring

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Jay E. Eckhaus, Esq.  
Public Arbitrator, Presiding Chairperson

G-24-05  
Signature Date

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Barry K Thorpe, Esq.  
Public Arbitrator

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Non-Public Arbitrator

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