

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

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In the Matter of the Arbitration Between:

Patti Schachter Margolis and Shana Elissa Margolis (Claimants) v. Merrill Lynch, Pierce, Fenner and Smith, Inc. and Faye Morton (Respondents)

Case Number: 04-07052

Hearing Site: Cleveland, Ohio

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Nature of the Dispute: Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Claimants Patti Schachter Margolis ("P. Margolis") and Shana Elissa Margolis ("S. Margolis") hereinafter collectively referred to as "Claimants": Lawrence Scanlon, Esq., Scanlon & Co., LLC, Akron, OH.

Respondents Merrill Lynch, Pierce, Fenner and Smith, Inc. ("Merrill Lynch") and Faye Morton ("Morton") hereinafter collectively referred to as "Respondents": Brett D. Sherman, Esq., Merrill Lynch, Pierce, Fenner and Smith, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 30, 2004.

Claimant P. Margolis signed the Uniform Submission Agreement: September 3, 2004.

Claimant S. Margolis signed the Uniform Submission Agreement: September 4, 2004.

Statement of Answer filed by Respondents on or about: December 20, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: December 8, 2004.

Respondent Morton signed the Uniform Submission Agreement: December 30, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability and failure to supervise. The causes of action relate to Cisco Systems, EMC Corp., Intel Corp., Lucent Technology, Microsoft, Motorola, Sun Microsystems common stock; Aim Telecom, Aim Value Class A, Aim Value Class B, Alger Cap Appreciation, Alliance Premier, Merrill Lynch Focus Fund, Putnam Group (Voyager/Discovery) and Putnam Opportunity mutual funds.

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

### **RELIEF REQUESTED**

Claimant P. Margolis requested the return of all monies invested and lost in the amount of \$175,000.00; plus interest and reasonable expectation of return from the date of investment; the value and benefit P. Margolis would have achieved had the funds been properly invested in suitable investments, estimated to be approximately \$70,000.00; and reasonable attorneys' fees, costs, interest in the amount of \$99,737.33, and other expenses incurred in pursuing this remedy.

Claimant S. Margolis requested the return of all monies invested and lost in the amount of \$6,880.00; plus interest and reasonable expectation of return from the date of investment; the value and benefit S. Margolis would have achieved had the funds been properly invested in suitable investments, estimated to be approximately \$500.00; and reasonable attorneys' fees, costs, interest in the amount of \$3,375.88, and other expenses incurred in pursuing this remedy.

Claimants also requested all other legal and/or equitable relief, as the Panel deems appropriate.

Respondent requested that the Panel dismiss the Statement of Claim in its entirety; award Respondents the costs and expenses of this arbitration including forum fees and reasonable attorneys' fees; recommend expungement of this matter from the CRD records of Respondent Morton; and award Respondents such other and further relief as is just and proper.

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

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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Claimants' claims are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Morton's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Morton 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, the arbitration panel has made the following affirmative findings of fact: the claim, allegation, or information is false.

3. Any and all relief not specifically addressed herein, 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

#### **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 and Smith, Inc. is a party.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

Total Member Fees = \$ 5,200.00

#### **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:

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$ 1,125.00

Pre-hearing conference: March 2, 2005 1 session

Six (6) Hearing sessions @ \$1,125.00 per session = \$ 6,750.00

Hearing Dates: August 9, 2005 2 sessions

August 10, 2005 2 sessions

August 11, 2005 2 sessions

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Total Forum Fees = \$ 7,875.00

1. The Panel has assessed \$1,968.75 of the forum fees against Claimants.
2. The Panel has assessed \$5,906.25 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimants are is solely liable for:

|                                     |               |
|-------------------------------------|---------------|
| Initial Filing Fee                  | = \$ 300.00   |
| Forum Fees                          | = \$ 1,968.75 |
| Total Fees                          | = \$ 2,268.75 |
| Less payments                       | = \$ 1,425.00 |
| Balance Due NASD Dispute Resolution | = \$ 843.75   |

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 Merrill Lynch and Morton are jointly and severally liable for:

|                                     |               |
|-------------------------------------|---------------|
| Forum Fees                          | = \$ 5,906.25 |
| Balance Due NASD Dispute Resolution | = \$ 5,906.25 |

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

**ARBITRATION PANEL**

|                      |  |
|----------------------|--|
| John S. Weisheit     | Public Arbitrator, Presiding Chairperson |
| Andrew G. Young      | Public Arbitrator                        |
| C. Robert Rittberger | 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.

  
John S. Weisheit  
Public Arbitrator, Presiding Chairperson


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

\_\_\_\_\_  
Andrew G. Young  
Public Arbitrator

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

\_\_\_\_\_  
C. Robert Rittberger  
Non Public Arbitrator

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

  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

|                      |   |  |
|----------------------|---|--|
| John S. Weisheit     | - | Public Arbitrator, Presiding Chairperson |
| Andrew G. Young      | - | Public Arbitrator                        |
| C. Robert Rittberger | - | Non-Public Arbitrator                    |

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John S. Weisheit  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Andrew G. Young  
Public Arbitrator

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

\_\_\_\_\_  
C. Robert Rittberger  
Non-Public Arbitrator

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

September 13, 2005  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

|                      |   |  |
|----------------------|---|--|
| John S. Weisheit     | - | Public Arbitrator, Presiding Chairperson |
| Andrew G. Young      | - | Public Arbitrator                        |
| C. Robert Rittberger | - | Non-Public Arbitrator                    |

**Concurring Arbitrators' Signatures**

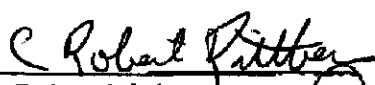
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\_\_\_\_\_  
John S. Weisheit  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Andrew G. Young  
Public Arbitrator

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

  
\_\_\_\_\_  
C. Robert Rittberger  
Non-Public Arbitrator

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Signature Date

  
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