

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

**COPY**

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In the Matter of the Arbitration Between:

Merrill Lynch, Pierce, Fenner & Smith Incorporated, Kevin Michalczewski, Kenneth Grebenstein and John D'Amico, Claimants v. Tom Horgan and Adele Horgan, Trustees of the Horgan Family Trust U/A dtd 11/4/96, Respondents

Case Number: 04-08039

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

Eric J. Glassman, Esq.  
Mennemeier, Glassman  
& Stroud LLP  
Sacramento, California

For Respondents:

Mitchell S. Ostwald, Esq.  
The Law Offices of  
Mitchell S. Ostwald  
Sacramento, California

**CASE INFORMATION**

Statement of Claim filed: November 22, 2004

Amendment to Statement of Claim filed: March 9, 2005

Stipulation of the Parties Re Claimants' Request for Declaratory Relief filed: June 2, 2005

Claimant Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed: September 2, 2005

Claimant Kevin Michalczewski's Uniform Submission Agreement signed: November 10, 2004

Claimant Kenneth Grebenstein's Uniform Submission Agreement signed: November 11, 2004

Claimant John D'Amico's Uniform Submission Agreement signed: November 12, 2004

### **CASE SUMMARY / RELIEF REQUESTED**

Claimants Kevin Michalczewski, Kenneth Grebenstein and John D'Amico requested an Award recommending expungement of all references to NASD Dispute Resolution Arbitration Number 03-01530 from their records maintained by the NASD Central Registration Depository.

Respondent did not object to the relief sought by Claimants.

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

The parties waived the hearing in this matter and requested that the above-referenced dispute be resolved on the basis of the Statement of Claim and Stipulation of the Parties Re Claimants' Request for Declaratory Relief. The parties agreed that the above-referenced dispute may be decided on the papers by a single arbitrator appointed in this matter.

### **AWARD**

After considering the pleadings and stipulation of the parties, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

This is an arbitration seeking declaratory relief for entry of a stipulated award ordering (or requesting) 1 expungement with respect to a prior NASD arbitration between the same parties, roles reversed (that is, as to who are "claimants" and "respondents"). The parties have stipulated that the request for such relief in the present case can be decided by one arbitrator without any selection exercised by the parties, also without any evidentiary or other hearing involving the party representatives, and therefore be decided solely "on the papers."

The undersigned is the sole arbitrator appointed for the foregoing purpose by the NASD Director of Arbitration. In addition to the papers submitted by the parties in the present case, I requested and received copies of the original Statement of Claim ("SOC") and Answer to Statement of Claim ("Ans."), from the previous arbitration case containing the claims against the parties seeking expungement. All were carefully reviewed in fashioning this Order.

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1 At least for this arbitrator, there exists continuing confusion in NASD arbitrations regarding the correct verb to use in characterizing what NASD arbitrators do, in providing "expungement" relief for individual "associated" or "registered" person respondents. For instance, Notice to Members 99-09 uses both "direct" and "order", while the new Rule 2130, NASD Code of Arbitration Procedure, utilizes "request" and "order." Counsel for the parties used the word "recommends." As the word "order" predominates in the NASD's documents, that is the verb used here, while the intended action is the same for all the verbs.

**I. Procedural Posture:**

**1. The Previous Case:** The present case arises out of a previous NASD arbitration entitled Tom Horgan and Adele Horgan, etc., Claimants, vs. Merrill Lynch, Pierce, Fenner & Smith Incorporated, et al., Respondents, NASD ODR Arbitration Case No.03-01530, filed March 3, 2003 ("the previous case.") In it, the Horgans appeared as trustees for their family trust making the investments involved. Named as individual respondents were the three registered representatives associated with Merrill Lynch with whom the Horgans communicated over the approximate two (2) year period that they were Merrill clients: Kevin Michalczewski, Kenneth Grebenstein, John D'Amico. 2

The SOC in the previous case alleged that the respondents were liable for breach of fiduciary duty (see SOC, paras. 51-54), fraud (id. at paras. 55-60), "constructive fraud" (id. at paras. 61-65), failure to supervise - as to respondent Merrill Lynch (id. at paras. 66-69) -- and violations of various securities laws or exchange rules (id. at paras. 70-72).

The Respondents filed their Answer to the SOC in the previous case on May 29, 2003. For reasons discussed below, in furtherance of what I understand to be the NASD's policies regarding its arbitrators ordering expungements **agreed (or consented) to by the parties, as part of their settlement of an arbitration case without any evidentiary hearings**, the factual allegations in the statement of claim, and in the answer thereto -- independent of a stipulated characterization of those facts -- assume significance. Thus, these factual allegations in the previous case are summarized later. Suffice it to note here that in contradistinction to the pleadings in many NASD arbitrations, the facts respectively alleged in the underlying case are markedly consistent.

There were no evidentiary hearings in the underlying case. Apparently no motions for a disposition "on the merits" were filed in it. Instead, sometime prior to May 17, 2004, just over a year after the previous case was at issue, the parties agreed to settle it, including an agreement that a request by the Respondents that the stipulated award provide that any mention of the arbitration should be expunged from the records of the individual financial advisor Respondents, maintained in the NASD's "Central Registration Depository" ("CRD"), would be consented to by the Claimants.

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2 Individual "stockbrokers", commonly named as the individual respondents in NASD arbitration claims alleging various forms of "securities" fraud, such as the previous case, are variously called "associated persons" or "registered representatives" or "investment advisers", etc. In the previous case, Merrill Lynch called Messrs. Michalczewski, Grebenstein, and D'Amico, "financial advisors." So did the Horgans (SOC at para. 4). That terminology is accordingly generally used hereafter in this Order.

The Horgans' counsel notified the NASD staff that the case was settled (without any details, including the expungement request, being provided), by his letter of May 17, 2004, also requesting any refund of NASD fees that might result from the settlement. NASD staff replied by letter of June 15, 2004. In it, NASD (a) stated that the previous case was then being removed from the arbitration docket, (b) assessed forum fees, sending Claimants' counsel a bill for the Horgans' share, and (c) concluding that if the letter or the enclosed statement of account were "in any way inaccurate" then the NASD should be contacted "within the next 5 business days."

Apparently the parties' counsel had not anticipated that the NASD staff would "close the case file" so quickly, before receiving or preparing any stipulated award, including an arbitrators' order for CRD expungement. Thus, after receiving the NASD letter, a "Stipulation Requesting Order Recommending Expungement Of Matter From Respondent[s] etc. C.R.D. Records", signed by Claimants' counsel on June 9, and by Respondents' counsel on June 17, was promptly sent from Sacramento to the NASD staff in Los Angeles by overnight delivery on June 18, received on June 21, 2004. The Stipulation provided a "so ordered" clause at the end, and a space for signature by an arbitrator (presumably the chair of the arbitration panel in the previous case.)

A period of "5 business days" from June 15 expired on Tuesday, June 22, 2004. While the Stipulation therefore arrived at NASD before the end of the 5-day period, the NASD staff advised counsel that it was "untimely" since the case was previously "closed" on June 15, and therefore the Stipulation would not be forwarded to the arbitration panel. NASD staff also advised counsel that, in any event, under NASD Notice to Members 99-09 concerning CRD expungement procedures, NASD would only comply with an **award** for expungement, first confirmed by a court of competent jurisdiction (i.e., an "order" for expungement, even if judicially confirmed, would be insufficient).

When counsel inquired about a way out of the procedural impasse, NASD staff suggested the present follow-on arbitration proceeding for declaratory relief. The Statement of Claim in this case was filed November 4, 2004, with the previous respondents now claimants, and the Horgans now the respondents. Instead of an answer by respondents, the parties through their counsel entered into a "Stipulation, etc., Re Claimants' Request for Declaratory Relief" on May 31, 2005. In it, Merrill Lynch and the individual financial advisors characterize the operative allegations and underlying facts in the previous case, requesting expungement relief for the three latter parties on the basis that they were personally "not involved" in making the particular investment recommendations for the Horgans' accounts at Merrill Lynch about which the Horgans had complained, and consequently the allegations against the three individual Respondents in the previous case should be determined to have been "false." By their counsel, the Horgans state in the Stipulation that they "did not oppose" expungement relief; nor is there any contest by the Horgans over any of the factual recitals therein.

## 2. Applicable Expungement Standards:

In the May 2005 Stipulation in the present case, brokers' counsel argues that as the previous case was filed on March 3, 2003, and (new) Rule 2130 which currently controls arbitral orders for CRD expungement was made effective only as to arbitrations filed "on or after April 12, 2004" (i.e., more than a year after the previous case was filed), the standards of Rule 2130 should not govern the present expungement request.

Presumably the NASD staff might agree, because as noted, in rejecting the stipulation to an order of expungement in the previous case as untimely, staff also noted that the stipulation did not comply with procedural requirements of Notice 99-09, which relates to preceding NASD expungement regime before Rule 2130 (e.g., a requirement that expungement be directed by an "award", not just some "order").

By entering into the Stipulation in the present case, counsel for the Horgans also presumably agrees that Rule 2130 does not govern here; or, at least he does not oppose that contention.

However, apparently out of an abundance of caution, the present case Stipulation argues that expungement is proper under **either** standard, i.e., either Rule 2130, or the prior expungement landscape to which Notice 99-09 referred. The concern may be that should the arbitrator in this case award expungement, the NASD may appear in the later court confirmation proceeding and argue that Rule 2130 does apply, on the grounds that expungement is being "awarded" out of the **present** case, which was filed after April 12, 2004, even though the alleged conduct in question was the subject of an arbitration, later settled, which was commenced well before the effective date of Rule 2130. And, it is also possible that a confirming court could, *sua sponte*, decide to apply the standards of Rule 2130 to such an expungement award. Accordingly, this Award considers the stipulated expungement request in the context of both standards, as well.

3. NASD ODR Policy Concerning "Stipulated" Expungement Requests: In its various filings concerning then-proposed Rule 2130, and in the educational materials provided to arbitrators regarding the new Rule, NASD ODR expressed concern about arbitral expungement awards in "settled" arbitration cases, i.e., ordering expungement in arbitrations disposed of by settlement agreements between the parties, where presumably the agreement to an expungement in behalf of the individual registered representative parties (or at least an agreement not to "contest" an expungement request to the arbitrators), is part of the consideration being exchanged for settlement. The concern is particularly manifest where the settlement takes place (as here), without any evidentiary hearings having occurred. Starkly put, the concern is that in the process of the parties' and their representatives' desire to execute their compromise agreement, and of the arbitrators to facilitate such an agreed disposal of the controversy ("the law favors compromise"), some expungements could be ordered in circumstances where the conduct of the individual

respondents was, in fact, so egregious, that for the protection of the investing public, the "record" of the (settled) case should remain in the individuals' CRD records, regardless of the complete compromise of the arbitration case. The provisions of Rule 2130 reflect these concerns.

Therefore NASD ODR arbitrators are instructed, in effect, to look carefully at "stipulated" expungement requests, where the requests are part of the settlement of an arbitration case that was never tried.

Presumably where the arbitration case is "tried" before the arbitrators in evidentiary hearings, the arbitrators then have at hand all, or at least much, of the actual and possibly disputed evidence relevant to the conduct of the individual registered representative respondents, to weigh in deciding on expungement. From the standpoint of protecting the interests of the investing public, and of regulatory bodies, that is consequently a somewhat "safer" or certainly more "complete" record to which the arbitrators can refer, in deciding whether to grant expungement relief.

I conclude that arbitrators can meet the standards of NASD ODR in reviewing stipulated expungement requests which are derived from settlement, without holding evidentiary hearings (which would incur further legal fee expense, defeating in part one of the rationales for settling, in the first place.) However, I also conclude that in deciding whether to grant the stipulated expungement "on the pleadings", the arbitrator(s) should take the time and effort to carefully and fully review the available factual context, from the available written sources, to try and determine if CRD expungement would, or would not, satisfy the public policy goals enunciated above. That is the process that I sought to follow in making the present order.

## II. "Facts" Concerning Advisors' Misconduct:

The essence of the presentation by Merrill Lynch and its three financial advisors in the Stipulation is that, in substance, the misconduct by any individuals at Merrill Lynch to which the Horgans' claims relate, if any, was effected by other persons than the three individual respondents: persons not named as parties, such as those certain unidentified "independent" "investment managers" working in the "Consults" program. Misconduct by these other people, if established, could result in Merrill Lynch's liability under respondeat superior. However, the brokerage firm's possible derivative liability to Claimants on that basis, is not determinative of the propriety of expungement relief for the three named Respondent financial advisors.

1. Allegations of the Statement of Claim: The remarkable aspect of the SOC that is particularly relevant to my inquiry is the significant degree to which Claimants' allegations are directed against "the respondents" (i.e., Merrill Lynch as well as the individual Respondents), and not a particular party financial advisor.

Claimants assert that their patronage at Merrill Lynch was solicited, apparently by Respondent Michalczewski, starting in early 1999. He sent them a letter in January inviting the Horgans to participate in the brokerage's financial planning services. After these parties met, a "Financial Planning Group" "report" dated March 24, 1999, was prepared for Claimants. There is however no allegation that any of the three named financial advisors participated in preparing that report (SOC at paras. 6 and 7). The Horgans thereafter opened a Merrill Lynch account (Ans. at 2; SOC at para. 11).

Claimants allege that they relied on "representations" in the March 1999 report, but do not allege that the same were "representations" by any of the individual Respondents. Instead, Claimants assert that the "respondents" never followed "their" own "written plans" for Claimants' investments; but "respondents" improperly created an aggressive, high risk portfolio; and "respondents" never discussed this "high risk" regime with Claimants (SOC at paras. 12-15). Further, Claimants assert that unspecified "respondents" did not disclose inherent risks in the report; and ignored its asset allocation mix, as reflected in their account's March 2000 position (SOC at paras. 17-19).

Michalczewski left Merrill Lynch in the "late spring" of 2000, whereupon Claimants' account was assigned to the other two Respondent financial advisors (SOC at paras. 26, 27.) (Michalczewski left in May 2000; Ans. at 3.) In July 2000, a new investment "report" was prepared for the Horgans, apparently authored by something called the "DPG Group" at Merrill; on information and belief, Grebenstein and D'Amico were "part" of the "DPG Group" (SOC at para. 27). Thereafter, Claimants allege, over the succeeding months, Respondent "Merrill" (not any particular individual representative is named) made investment decisions for their account, including those the Horgans characterize as improper (see, e.g., SOC at paras. 41, 45, 47).

As to expressly-identified individual action by any Respondent financial advisor, Claimants specified the following:

Michalczewski solicited the Claimants' investment business, suggesting the use of Merrill Lynch's "financial planning services" (i.e., preparation of a "report", then implementation of its goals by the investment managers in the "Financial Planning Group"). SOC at paras. 6, 7. He may also have suggested early mutual fund investments.

Grebenstein induced Claimants to transfer two \$100,000 "cash deposits" into (two?) separate accounts used to "house individual and often speculative equity purchases" as a form of a "different" investment approach (SOC at para. 49). (This is apparently a reference of the "funding" by the Horgans of their July 2000 participation in Merrill Lynch's "Consult" program.)

**2. Allegations in Answer:** In their Answer, Respondents alleged that Michalczewski met with the Claimants in early 1999, reviewed their investment goals with them, and suggested that they utilize Merrill's financial planning services after a "report" overview of Claimant's financial

condition, and investment goals, was prepared. The Horgans agreed; an account with Merrill Lynch was opened in May 1999 (Ans. at 2).

After Michalczewski left Merrill Lynch in May 2000, Grebenstein and D'Amico became Claimants' financial advisors, met with the Horgans in June 2000, went over their holdings, and a second "report" was prepared for Claimants in July 2000: the two successor advisors suggested that the Horgans participate in Merrill's "Consults" program, to permit the "new investments" (per the second report) to be handled by the "independent managers" of "Consults", to which Claimants agreed (Ans. at 3; see 3:20-28 as to the "independent managers" making the investment decisions.) Two (non-party) independent managers made all the investment decisions after July 2000; Messrs. Grebenstein and D'Amico made no investment decisions or recommendations involving Claimants' accounts (Ans. at 2:28-3:5.)

3. Stipulated Facts: In the Stipulation, the brokers' counsel weaves these underlying factual allegations together, as follows:

While Grebenstein and D'Amico made no investment recommendations or decisions for the Horgans, (apparently) Michalczewski had earlier recommended the purchase of various mutual fund shares, invested in a variety of asset classes (apparently) of such diversity that they could not be included in Claimants' allegations of "risky" or overly-aggressive investments (Stip. at 4:9-17.)

Because excepting Michalczewski's initial recommendations, all of the investment transactions of which Claimants' complained, were instituted by the non-party "independent investment managers" operating as part of Merrill Lynch's "Consults" program, the allegations in the statement of claim in the previous action of wrongful securities "sales practices violations" directed against the three individual Respondents are "false" (Stip. at 4:18-26.) By executing the Stipulation, it appears that the Claimants agree, or do not contest the assertion that Michalczewski's initial mutual fund investment recommendations were not wrongful and/or are not included in the class of bad investment advice complained of by them. 3

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3 The parties' Stipulation does not deal directly with the allegation in the statement of claim in the previous case, that Respondent Grebenstein somehow acted wrongfully by, in effect, soliciting the Claimants to fund their Merrill Lynch account(s) with \$200,000 in cash. From all that is provided from the record in both arbitration cases, it is logical to conclude that these allegations are a reference to the Claimants investing cash under some suggestion in the July 2000 "Financial Foundation Report", in connection with their voluntary participation in Merrill Lynch's "Consults" program where their investments would be handled by the un-named (and un-sued) "independent investment managers." In one aspect, these allegations suggest a sort of bootless "proximate cause" assertion: i.e., "If Ken Grebenstein had not suggested that we put \$200,000 in cash into the 'Consults' program, we would not have lost some of that cash because of bad investment decisions by the 'Consults' independent managers." The Horgans could not have participated in "Consults" without placing investment capital in that program. I do not think it would be proper to refuse expungement to Respondent Grebenstein, on the basis of this particular allegation directed to him personally.



### III. Application of Facts to Expungement Standards:

Notice 99-09 is not a statement of standards for NASD CRD expungements pre-Rule 2130. Instead, it imposed a "moratorium" on expungements ordered by NASD arbitrators, **without** a confirmation of that step by a "court of competent jurisdiction." That "moratorium" was not revoked. It was "replaced" by (new) Rule 2130, effective on April 12, 2004. Thus, if I award expungement here under pre-Rule 2130 NASD ODR procedure, irrespective of the basis therefor, for expungement to occur the three individual financial advisors must first obtain a "confirmation" of such an award in a "court of competent jurisdiction" (presumably the California Superior Court, Sacramento County.) In that procedure, there would be no requirement for the NASD to be made a party in the court proceeding; but, presumably it could intervene.

If however I award expungement under Rule 2130, the NASD "must" be named as a party in any proceeding for confirmation in that "court of competent jurisdiction", unless upon a preceding request from Respondents, NASD "waives" the requirement to be named as a party. NASD will waive the requirement if NASD staff determines that the expungement award is based on an "affirmative" finding that the expungement meets one or more of the "standards" in Rule 2130, i.e., that:

Claimants' claims were factually impossible, or clearly erroneous (for example, Merrill Lynch and its employees had no dealings with the Horgans because they were customers at another brokerage; the registered representative named was deceased at the time of the alleged securities sales misconduct). Rule 2130(b)(1)(A).

The registered representative sued was simply "not involved" in the sales practice violation(s) alleged. Rule 2130(b)(1)(B).

The claims asserted against the representative seeking expungement were "false". Rule 2130(b)(1)(C).

As regards the standard in Rule 2130(b)(1)(C), when the Rule was promulgated, I personally asked the NASD staff involved if the intent in using the word "false" was to impose a standard equivalent to that utilized in the civil tort of malicious prosecution, i.e., "knowingly false" as distinct from some variant of "mistaken" or "wrong." I was told in substance that a malicious prosecution measure was not intended.

Here, under the pleadings in the previous case and matrix of operative facts agreed to by the parties by their Stipulation in this case (the allegations in the former demonstrably do not "impeach" the factual statements in the latter), it could be argued that the standard of Rule 2130(b)(1)(B) has been met. However, I do not believe so. "Involved" is a broad word. Its choice

indicates the intent of a rather wide sweep of inclusion for this standard: to not be "involved" at all, goes beyond the admittedly-limited activities of the three financial advisors in this case.

However, I conclude upon that same basis (pleadings, agreed or consented to facts), that the allegations of securities sales practice violations, directed against the individual Respondents in the previous case, were "false" in that they were mistaken.

I further conclude that expungement of any information about the particular arbitration case involving the Horgans and Messrs. Michalczewski, Grebenstein, and D'Amico, from the CRD records of those individual registered representatives, would not violate any policies of the NASD, or deprive members of the investing public, or any other regulatory agency, of information that would be vital to reasonable investment safety, or to the integrity of securities markets.

**WHEREFORE, IT IS HEREBY ORDERED:**

1. The stipulated request for expungement is granted, and expungement should be awarded in the above-entitled arbitration, providing such relief to Claimants Kevin Michalczewski, Kenneth Grebenstein, and John D'Amico.

2. Because expungement concerns claims made in an arbitration case filed before April 12, 2004, the standards for expungement are those existing before the effective date of Rule 2130, NASD Code of Arbitration Procedure, i.e., that under the relevant facts, expungement is proper and such a step will not violate the policies behind maintaining mention of an arbitration claim in a representative's CRD record, after the claim has been dismissed without a finding of liability, as here.

3. Alternatively, if it is deemed that Rule 2130 controls this proceeding, I expressly find that the standard of Rule 2130(b)(1)(C) has been met as regards the claims against the individual financial advisors, made in the previous case.

4. Accordingly, the Arbitrator orders the expungement of all reference to NASD Dispute Resolution Arbitration Number 03-01530 and expungement of all reference to the above captioned arbitration from Claimants Kevin Michalczewski, Kenneth Grebenstein and John D'Amico's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that Claimants Kevin Michalczewski, Kenneth Grebenstein and John D'Amico must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

5. Any costs assessed in this proceeding should be assessed to Claimants pursuant to the stipulation between Claimants and Respondents.

6. All other relief requested and not expressly granted is denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 500.00
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#### Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch is a party and employed the individual Claimants at the time of the events giving rise to this dispute and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
<u>Pre-Hearing Process Fee</u>	<u>= \$ 750.00</u>
<b>Total Member Fees</b>	<b>= \$ 2,250.00</b>

#### Forum Fees and Assessments

The Arbitrator assessed a forum fee in the amount of \$1,000.00 for deciding the above-referenced matter based on the written positions of the parties. Referencing the parties' agreement, the Arbitrator assessed the \$1,000.00 forum fee jointly and severally to Respondents Merrill Lynch, Kevin Michalczewski, Kenneth Grebenstein and John D'Amico.

### Fee Summary

1. Claimant Merrill Lynch is charged with the following fees and costs:

Member Fees	= \$ 2,250.00
<u>Less payments</u>	<u>= \$(2,250.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

2. Claimants Merrill Lynch, Kevin Michalczewski, Kenneth Grebenstein and John D'Amico are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 1,000.00</u>
Total Fees	= \$ 1,500.00
<u>Less payments</u>	<u>= \$(1,500.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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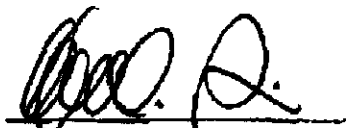
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Edwin C. Shiver, Esq.

Public Arbitrator, Presiding Chair

**Presiding Arbitrator's Signature**



Edwin C. Shiver, Esq.  
Chair, Public Arbitrator

9/6/2005  
Signature Date

9/6/05  
Date of Service