

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

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In the Matter of the Arbitration Between:

Names of the Claimants

Robert R. Manfredi  
Robert T. Manfredi, IRA  
Carol A. Manfredi

Case Number: 04-08347

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Robert W. Costos  
Leo J. Kelly, III

Hearing Site: Baltimore, MD

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

**REPRESENTATION OF PARTIES**

Claimants, Robert R. Manfredi, Robert R. Manfredi, IRA, and Carol A. Manfredi, hereinafter collectively referred to as "Claimants", were represented by Chris Thomas, Esq., Capretz & Associates, Newport Beach, California.

Respondents, Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"), Robert W. Costos ("Costos"), and Leo J. Kelly, III ("Kelly"), hereinafter collectively referred to as "Respondents", were represented by Ira L. Oring, Esq., Fedder and Garten, P.A., Baltimore, Maryland.

**CASE INFORMATION**

Statement of Claim filed on December 7, 2004.

Claimant Robert R. Manfredi signed the Uniform Submission Agreement individually and on behalf of his IRA on October 4, 2004.

Claimant Carol A. Manfredi signed the Uniform Submission Agreement on January 3, 2005.

Statement of Answer filed by Respondents on March 10, 2005.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on March 14, 2005.

Respondent Costos signed the Uniform Submission Agreement on January 12, 2005.

Respondent Kelly signed the Uniform Submission Agreement on January 10, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action, among others: suitability, negligence, breach of fiduciary duty, over-concentration, failure to execute, violation of Maryland Securities Law, and failure to supervise. The causes of action relate to the purchase and sale of various securities, including WCOM, CAN Financial, Elan, Northwestern, Tyco, Genzyme, and Crown Cork and Seal.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: the Statement of Claim is barred by the doctrines of ratification, waiver, and estoppel; the Statement of Claim is barred by the equitable doctrine of laches; statutes of limitations; assumption of risk; contributory negligence; failure to mitigate damages; and the Statement of Claim fails to set forth a cause of action upon which relief can be granted.

### **RELIEF REQUESTED**

Claimants in their Statement of Claim requested:

Compensatory Damages	\$632,411.00
Punitive Damages	\$250,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed in its entirety, that the Arbitration Panel (the "Panel") recommend that all references to this arbitration be expunged from Respondent Costos' and Respondent Kelly's registration records maintained by the NASD Central Registration Depository ("CRD"), and that the Panel award them costs and forum fees.

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

At the hearing on the merits, Respondents made an oral motion that the Panel dismiss all Claimants' claims. The Panel dismissed Claimants' claims under the Maryland Securities Law and dismissed any claim or loss with respect to Crown, Cork and Seal transactions. The Motion to Dismiss was otherwise denied.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents are denied in their entirety;
2. All claims for punitive damages and attorneys' fees are denied in their entirety;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein 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 = \$ 375.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

Total Member Fees = \$7,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

December 12-16, 2005 adjournment requested by Claimants fee waived

#### **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 Panel @ \$1,200.00 = \$ 1,200.00

Pre-hearing conference: June 23, 2005 1 session

Seven (7) Hearing sessions @ \$1,200.00 = \$ 8,400.00

Hearing Dates: March 27, 2006 2 sessions

March 28, 2006 2 sessions

March 29, 2006 2 sessions

March 30, 2006 1 session

Total Forum Fees = \$ 9,600.00

1. The Panel has assessed \$4,800.00 of the forum fees jointly and severally to Claimants.

2. The Panel has assessed \$4,800.00 of the forum fees jointly and severally to Respondents.

### **FEE SUMMARY**

1. Claimants are jointly and severally assessed and shall pay the following fees:

Initial Filing Fee = \$ 375.00

Forum Fees	= \$4,800.00
Total Fees	= \$5,175.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$3,600.00

2. Respondent Merrill Lynch is assessed and shall pay the following fees:

Member Fees	= \$7,000.00
Total Fees	= \$7,000.00
Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 00.00

3. Respondents are jointly and severally assessed and shall pay the following fees:

Forum Fees	= \$4,800.00
Total Fees	= \$4,800.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$4,800.00

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

**ARBITRATION PANEL**


Gail Randy Smith, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard P. Regan, Esq.	-	Public Arbitrator, Panelist
Merle D. Rockwell	-	Non-Public Arbitrator, Panelist

NASD Dispute Resolution

Arbitration No. 04-08347

Award Page 5

**Concurring Arbitrators' Signatures**



Gail Randy Smith, Esq.  
Public Arbitrator, Presiding Chairperson



Signature Date

Richard P. Regan, Esq.  
Public Arbitrator, Panelist

Signature Date

Merle D. Rockwell  
Non-Public Arbitrator, Panelist

Signature Date



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

04/03/2006 16:13 FAX 202 728 8082

NASD DISPUTE RESOLUTION

0007/007

NASD Dispute Resolution


Arbitration No. 04-08347

Award Page 5

**Concurring Arbitrators' Signatures**

Gail Randy Smith, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

  
Richard P. Regan, Esq.  
Public Arbitrator, Panelist

4/4/06  
Signature Date

Merle D. Rockwell  
Non-Public Arbitrator, Panelist

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NASD Dispute Resolution  
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Award Page 5

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Gail Randy Smith, Esq.  
Public Arbitrator, Presiding Chairperson

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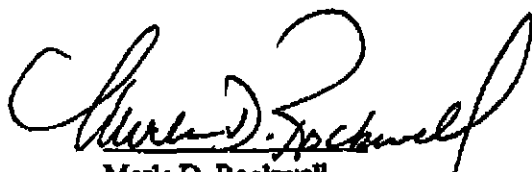
Signature Date

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Richard P. Regan, Esq.  
Public Arbitrator, Panelist

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Signature Date

  
Merle D. Rockwell  
Non-Public Arbitrator, Panelist

4-3-06  
Signature Date

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