

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

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In the Matter of the Arbitration Between:

William J. Young (Claimant) vs. Merrill Lynch Pierce Fenner & Smith, Inc., Michael Parziale, Richard Ina and Daniel Morilak (Respondents)

Case Number: 05-01233

Hearing Site: Cleveland, Ohio

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

**REPRESENTATION OF PARTIES**

Claimant William J. Young hereinafter referred to as "Claimant": James S. Jones, James S. Jones, L.P.A., Poland, OH.

Respondent Richard Ina ("Ina"): Bruce W. Day, Esq., Day Edwards Propester & Christensen, PC, Oklahoma City, OK, previously *pro se*.

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., ("Merrill"), Michael R. Parziale (Parziale"), and Daniel P. Morilak ("Morilak"): Bruce W. Day, Esq., Day Edwards Propester & Christensen, PC, Oklahoma City, OK.

**CASE INFORMATION**

Statement of Claim filed on or about: March 10, 2005.

Claimant signed the Uniform Submission Agreement: February 15, 2005.

Statement of Answer filed by Ina on or about: March 15, 2005.

Motion to Dismiss filed by Ina on or about: November 7, 2005.

Amended Motion to Dismiss filed by Ina on or about: February 1, 2006.

Respondent Ina signed the Uniform Submission Agreement: March 23, 2005.

Joint Statement of Answer filed by Respondents Merrill, Parziale, and Morilak on or about: May 16, 2005.

Respondent Merrill signed the Uniform Submission Agreement: March 21, 2005.

Respondent Parziale signed the Uniform Submission Agreement: June 3, 2005.

Respondent Morilak signed the Uniform Submission Agreement: June 3, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence, failure to supervise, breach of

fiduciary duty, misrepresentation, unauthorized trading, omission of facts and suitability. The causes of action relate to unspecified securities

Unless specifically admitted in his Answer, Respondent Ina denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$526,000.00, disgorgement of commission made on the annuity sale, punitive damages in the amount of \$1,000,000.00, attorneys' fees and such other relief the Panel deems just and proper.

Respondent Ina requested that Claimant's claim be dismissed in its entirety.

Respondents Merrill, Parziale, and Morilak requested that Claimant's claim be dismissed in its entirety, that the costs and fees of the arbitration be assessed against Claimant and the expungement of Respondents Parziale and Morilak's CRD records.

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

On March 6, 2006 a conference call was held with the parties and the Panel where the Panel heard testimony regarding Respondent Ina's Motion to Dismiss. By letter dated March 7, 2006, the Panel granted Respondent Ina's Motion to Dismiss.

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. Claimant's claims are dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Richard Ina's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Richard Ina 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 factually impossible or clearly erroneous.

3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Michael Parziale's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Michael Parziale 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 factually impossible or clearly erroneous.

4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Daniel Morilak's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Daniel Morilak 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 factually impossible or clearly erroneous.

5. Any and all relief not specifically addressed herein, including punitive damages 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 = \$ 500.00

#### **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 event giving rise to the dispute. Accordingly, Merrill Lynch Pierce Fenner & Smith, Inc. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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) Decision on discovery-related motions on the papers  
with (1) one arbitrator @ \$200.00 = \$ 200.00

Respondent submitted one discovery-related motion

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$2,400.00

Pre-hearing conferences: August 4, 2005 1 session  
March 6, 2006 1 session

Six (6) Hearing sessions @ \$1,200.00 = \$7,200.00

Hearing Dates: April 3, 2006 2 sessions  
April 4, 2006 2 sessions  
April 5, 2006 2 sessions

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Total Forum Fees = \$9,800.00

1. The Panel has assessed \$4,900.00 of the forum fees to Claimant.
2. The Panel has assessed \$1,633.33 of the forum fees to Respondent Merrill.
3. The Panel has assessed \$1,633.33 of the forum fees to Respondent Parziale.
4. The Panel has assessed \$1,633.33 of the forum fees to Respondent Morilak.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 4,900.00
Total Fees	= \$ 5,400.00
<u>Less payments</u>	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 3,700.00

2. Respondent Merrill is solely liable for:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 1,633.33
Total Fees	= \$10,183.33
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 1,633.33

4. Respondent Parziale is solely liable for:

<u>Forum Fees</u>	= \$ 1,633.33
Total Fees	= \$ 1,633.33
<u>Less payments</u>	= \$ 0.00

Balance Due NASD Dispute Resolution = \$ 1,633.33

5. Respondent Morilak is solely liable for:

Forum Fees = \$ 1,633.33

Total Fees = \$ 1,633.33

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 1,633.33

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

ARBITRATION PANEL

Elmer G. Cowan, Esq.	-	Public Arbitrator, Presiding Chairperson
Marc A. Winters	-	Public Arbitrator
Bert Cliff	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Elmer G. Cowan, Esq.  
Public Arbitrator, Presiding Chairperson

*Elmer G. Cowan*  
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Signature Date APR 14 2006

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Marc A. Winters  
Public Arbitrator

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

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Bert Cliff  
Non-Public Arbitrator

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

\_\_\_\_\_  
April 17, 2006  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Elmer G. Cowan, Esq.	-	Public Arbitrator, Presiding Chairperson
Marc A. Winters	-	Public Arbitrator
Bert Cliff	-	Non-Public Arbitrator

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Elmer G. Cowan, Esq.  
Public Arbitrator, Presiding Chairperson

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

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Marc A. Winters  
Public Arbitrator

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

  
\_\_\_\_\_  
Bert Cliff  
Non-Public Arbitrator

\_\_\_\_\_  
4-13-06  
Signature Date

\_\_\_\_\_  
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**ARBITRATION PANEL**

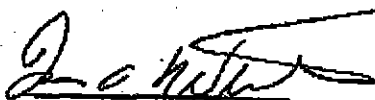
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Marc A. Winters  
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- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

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Elmer G. Cowan, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date



Marc A. Winters  
Public Arbitrator

4/13/06  
Signature Date

Bert Cliff  
Non-Public Arbitrator

Signature Date

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