

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

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In the Matter of the Arbitration Between:

Ann V. Kingston (Claimant) vs. Myron Stayman and Merrill Lynch, Pierce, Fenner & Smith, Inc. (Respondents)

Case Number: 05-01370

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Ann V. Kingston hereinafter referred to as "Claimant": Joan M. Markey, Esq., Joan M. Markey Attorney At Law, New York, NY.

Respondents Myron Stayman ("Stayman") and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") hereinafter collectively referred to as "Respondents": Gary Langan Goodenow, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., Miami, FL.

**CASE INFORMATION**

Statement of Claim filed on or about: March 14, 2005.

Claimant signed the Uniform Submission Agreement: January 19, 2005.

Joint Statement of Answer filed by Respondents on or about: May 25, 2005.

Merrill Lynch signed the Uniform Submission Agreement: May 24, 2005.

Stayman signed the Uniform Submission Agreement: May 31, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, unauthorized trading, and failure to supervise. The causes of action relate to Claimant's IRA Account and the purchase of 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 requested compensatory damages in the amount of \$55,593.75 for out of pocket losses in the IRA; \$30,000.00 which is the approximate amount the IRA would have increased in value if it had been appropriately invested in a conservative manner, e.g., in fixed income investments paying 5 percent, compounded annually; \$10,581.00 which is believed to be the amount Claimant lost due to the unauthorized purchase of stocks in her personal account; attorneys' fees in an amount not less than \$15,000.00 and punitive damages in the amount of \$100,000.00.

Respondents requested dismissal of the Statement of Claim in its entirety, expungement of this matter from Respondent Stayman's CRD records, and 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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$16,912.87.
2. Respondents are jointly and severally liable for and shall reimburse Claimant the cost of the filing fee of \$300.00.
3. 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 = \$ 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 & Smith, Inc. is a party.

Member Surcharge	= \$ 1,700.00
Pre-hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00

#### **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 arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: January 18, 2006 1 session	
One (1) Pre-hearing session with Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: September 7, 2005 1 session	

Eight (8) Hearing sessions @ \$1,125.00/session = \$ 9,000.00

Hearing Dates:            March 14, 2006            2 sessions  
                                 March 15, 2006            2 sessions  
                                 March 16, 2006            2 sessions  
                                 March 17, 2006            2 sessions

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Total Forum = \$ 10,575.00

1. The Panel has assessed \$10,575.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 1,450.00
<u>Refund Due Claimant</u>	= \$ 1,150.00

2. Respondent Merrill Lynch is solely liable for:

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

3. Respondents are jointly and severally solely liable for:

<u>Forum Fees</u>	= \$ 10,575.00
<u>Total Fees</u>	= \$ 10,575.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 10,575.00

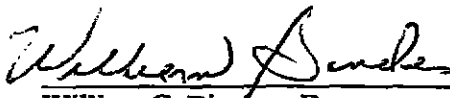
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

William G. Binckes, Esq.	-	Public Arbitrator, Presiding Chairperson
Jordan Roy Nelson, PhD	-	Public Arbitrator
Ruth Heisler	-	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.



William G. Binckes, Esq.  
Public Arbitrator, Presiding Chairperson

5/5/06  
Signature Date

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Jordan Roy Nelson, PhD  
Public Arbitrator

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

\_\_\_\_\_  
Ruth Heisler  
Non- Public Arbitrator

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Signature Date

May 9, 2006  
Date of Service (For NASD Dispute Resolution use only)

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Signature Date

  
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Public Arbitrator

5/4/06  
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Signature Date

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Ruth Heisler  
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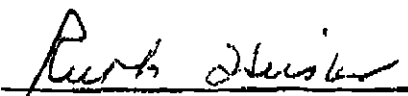
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