

96-00730

NASD REGULATION AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Paul C. Duffy

96-00730

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith Inc.  
Richard M. Atwell

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**REPRESENTATION**

For claimant Paul C. Duffy ("claimant") appeared Marian P. Abraham, Esq. of the law offices Deitzer, Moran & Abraham located in Boston, Massachusetts.

For respondents Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") and Richard M. Atwell ("Atwell") (collectively "respondents") appeared Joycelyn E. McGeachy, Esq., Assistant Vice President and Counsel for Merrill Lynch.

**CASE INFORMATION**

Statement of Claim was filed on: February 16, 1996.

Claimant's Submission Agreement was signed on: December 12, 1995.

A Joint Statement of Answer was filed by respondents on: April 19, 1996.

Respondent Merrill Lynch's Submission Agreement was signed on: October 15, 1996.

Respondent Atwell's Submission Agreement was signed on: October 14, 1996.

**HEARING INFORMATION**

Pre-Hearing Conference:	May 19, 1997	-	1 session
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Hearing Date/Sessions:	May 20, 1997	-	2 sessions
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The hearing was conducted at the offices of the American Arbitration Association located in Boston, Massachusetts.

**CASE SUMMARY**

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Claimant alleged that, by letter dated January 6, 1994, he directed respondents to hold at least \$200,000.00 in cash in his account so that he could put a down payment on real property. Claimant also alleged that the remainder of the funds in his account were to be used to develop a portfolio designed to return 12% to 15% per annum. Claimant contended that respondents failed to maintain \$200,000.00 in cash and that, as a result, he lost \$16,000.00. In addition, claimant contended that, because he was unable to liquidate his stock portfolio and was instead required to use margin, he was forced to expend \$7,700.00 in interest. Claimant maintained that he also lost 3% interest on the \$200,000.00 which should have been held as cash.

Respondents alleged that, in January 1994, claimant opened a cash management account with approximately \$500,000.00 in funds. Respondents contended that although claimant's letter dated January 6, 1994 indicated a request for some liquidity, it did not specify that funds for a down payment on a home purchase were to be held in cash equivalents. In addition, respondents maintained that claimant's plans and cash needs for purchasing real property were not precise and that Atwell complied with claimant's wishes to the extent that they were communicated to him.

#### RELIEF REQUESTED

Claimant requested actual damages in the amount of \$25,200.00. During the pre-hearing conference conducted in this matter, on May 19, 1997, claimant amended the amount of actual damages he requested to \$18,952.00.

Respondents requested that the Statement of Claim be denied in its entirety and that the costs and expenses of this arbitration proceeding be assessed against the claimant.

#### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents be and hereby are jointly and severally liable for and shall pay claimant the sum of **ELEVEN THOUSAND NINE HUNDRED TWELVE DOLLARS (\$11,912.00)**.
2. All other requests for relief are hereby denied.

#### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrator has determined that NASD Regulation shall retain the \$100.00 non-refundable filing fee and the \$200.00 member surcharge and has assessed the following forum fees:

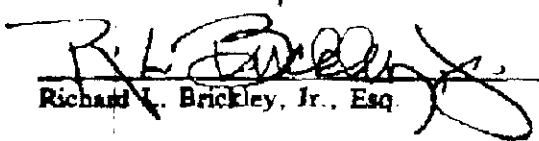
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1 pre hearing conference	=	\$300.00
2 hearing sessions x \$300.00	=	\$600.00

Respondents be and hereby are jointly and severally liable for and shall pay the sum of \$900.00, representing the total amount of forum fees assessed. Claimant previously deposited \$300.00 with NASD Regulation, Inc. and, therefore, respondents shall pay the balance of \$600.00 to NASD Regulation, Inc.

Fees are payable to the NASD Regulation, Inc.

Arbitrator's Signature

  
Richard L. Brickley, Jr., Esq.

Date of Decision: September 23, 1997