

## **AWARD**

### **NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

**Name of Claimant(s)**

Stanley and Kathleen McGinnis

v.

Arbitration No.  
97-00107

**Name of Respondent(s)**

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Joseph M. Samuels

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### **REPRESENTATION**

For Claimant: David S. Wallace, Esq.  
Shapiro Buchman, LLP  
Walnut Creek, California

For Respondent: Kenneth C. Mennemeier, Esq.  
Mennemeier, Glassman & Stroud  
Sacramento, California

### **CASE INFORMATION**

Statement of Claim filed January 9, 1997

Claimants' Submission Agreements signed:

Stanley McGinnis:	December 20, 1996
Kathleen McGinnis:	December 23, 1996

Joint Statement of Answer filed April 1, 1997.

Respondents' Submission Agreements signed:

Merrill Lynch:	March 31, 1997
Joseph Samuels:	April 1, 1997

### **HEARING INFORMATION**

Pre-hearing telephone conferences were held as follows:

March 3, 1998	-	1 session
March 5, 1998	-	1 session
May 26, 1998	-	1 session

The evidentiary hearing was held in San Francisco, California, as follows:

June 16, 1998	-	2 sessions
June 17, 1998	-	2 sessions
June 26, 1998	-	1 session

### **CASE SUMMARY**

Claimants alleged Respondents failed to execute orders as instructed, failed to inform them that shares of TravelMax could not be purchased on margin, purchased shares of Oracle without authorization and failed to reverse the Oracle transaction when Claimants complained.

Respondents denied the allegations of wrongdoing, and stated that the errors were corrected immediately at no charge to Claimants, and that Claimants deliberately mischaracterized Respondents' corrective actions to avoid the results of their own investment decisions.

### **RELIEF REQUESTED**

Claimants requested damages of \$59,878.00, plus interest and commissions paid.

Respondent requested dismissal of all claims.

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

The parties have agreed to receive conformed copies of the Award while the originals remain on file with NASDR, Inc.

### **AWARD**

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

1. All claims asserted by Claimants are dismissed in their entirety.
2. The parties shall bear their respective costs, including attorney's fees.

### **FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure, the NASDR shall retain Claimants' \$150.00 non-refundable filing fee. Forum fees are to be split as follows:

**Total fees:**

3 pre-hearing conferences @ \$300/session	\$ 900.00
5 hearing sessions @ \$500/session	<u>\$ 2,500.00</u>
	<u>\$ 3,400.00</u>

Claimants' one-half share	\$ 1,700.00
Credit for deposit	<u>\$ 500.00</u>
Balance Due:	<u>\$ 1,200.00</u>

Respondents' one-half share	\$ 1,700.00
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**Fees are payable to the National Association of Securities Dealers Regulation, Inc.**

Concurring Arbitrators Signatures  
Name

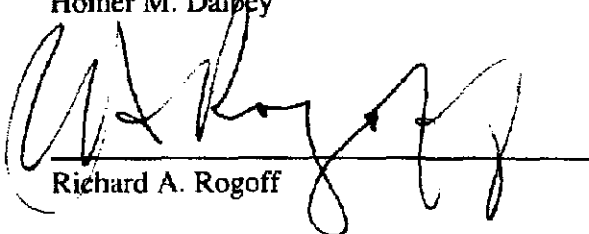
Public/Industry

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A. Bruce McKenzie  
Presiding Chairperson

Public

\_\_\_\_\_  
Homer M. Dalbey

Public

  
\_\_\_\_\_  
Richard A. Rogoff

Industry

**Date Served:**

**JUL 23 1998**

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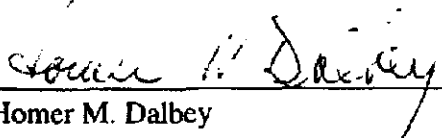
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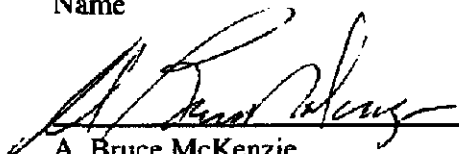
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