

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Names of Claimants

Mohammed and Farzana Rashid

Case No. 99-02503

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Jeffrey Scott Lavner

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**REPRESENTATION OF PARTIES**

For Mohammed Rashid and Farzana Rashid ("Rashid"), hereinafter collectively referred to as "Claimants": Randall W. Henley Esq., West Palm Beach, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch") and Jeffrey Scott Lavner ("Lavner"), hereinafter collectively referred to as "Respondents": Todd A. Zuckerbrod, Vice President, Senior Counsel, Litigation Department, Merrill Lynch, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: June 1, 1999.

Claimants signed the Uniform Submission Agreement: May 10, 1999.

Statement of Answer filed by Respondents on or about: August 24, 1999.

Respondent Merrill Lynch signed the Uniform Submission Agreement: August 20, 1999

Respondent Lavner signed the Uniform Submission Agreement: August 18, 1999

**CASE SUMMARY**

Claimants asserted the following: Prior to mid-year 1996, Claimants maintained an account with Merrill Lynch's Boca Raton, Florida office. In or around mid-year 1996, Claimants transferred the sum of \$100,000.00 to a new account with Lavner at Merrill Lynch's Glendale, California office. In October 1997, pursuant to suggestions from Lavner, Claimants transferred an additional \$100,000.00 to their account. In March 1998, Claimants transferred another \$100,000.00 to their account at the suggestion of Lavner. Thereafter, Lavner effected transactions, including executing trades on margin as well as buys and sells in the Claimants' account which were not suitable for the Claimants and which were done for the sole purpose of creating commissions for himself and for Merrill Lynch

which resulted in losses to the Claimants. Further, Respondents made intentional misrepresentations and/or omissions of material facts. In addition, Merrill Lynch failed to properly supervise Respondent Lavner and failed to exercise control over the actions of Respondent Lavner. Merrill Lynch had a fiduciary relationship with the Claimants and breached their duty to that relationship.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following: Claimants gave prior authorization for all transactions. Respondent Lavner explained the risks associated with utilizing margin and Claimants thereafter made a conscious decision to utilize margin. Claimants were charged a flat fee rather than commissions. Claimants, acting with full knowledge of the facts, ratified, approved, accepted, acquiesced in and confirmed in all respects the acts complained of in the Statement of Claim. Further, Claimants failed to mitigate their alleged damages.

#### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$242,789.70, plus interest, attorney's fees and the costs of the proceeding.

Respondent requested that all claims be dismissed in their entirety and that the costs of this action be assessed against Claimants.

#### **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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents are liable, jointly and severally, and shall pay to Claimants the sum of \$41,000.00 plus interest at the legal rate pursuant to Florida Statutes from August 2, 2000 until the date of payment of the Award.

All other requests for relief not specifically addressed herein are denied.

#### **FEES**

Pursuant to the Code, the following fees are assessed:

##### **Filing Fees**

NASD Dispute Resolution, Inc. 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. In this matter, the member firm is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

April 26 through 28, 2000 Hearing Dates, adjournment by Claimant. The Adjournment fee of \$1,125.00 was waived by the arbitration panel.

### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, 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 x \$1,125.00	= \$1,125.00
Pre-hearing conference: December 13, 1999	1 session
Five (5) Hearing sessions x \$1,125.00	= <u>\$5,625.00</u>
Hearing Dates: July 31, 2000	2 sessions
August 1, 2000	2 sessions
August 2, 2000	<u>1 session</u>
Total Forum Fees	= \$6,750.00

The Panel has assessed \$3,375.00 of the forum fees to Claimants.

The Panel has assessed \$3,375.00 of the forum fees jointly and severally to Respondents  
Merrill Lynch and Lavner.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$300.00
<u>Forum Fees</u>	<u>= \$3,375.00</u>
Total Fees	= \$3,675.00
<u>Less payments</u>	<u>= \$2,550.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1125.00

Respondent Merrill Lynch be and hereby is solely liable for:

Member Fees	= \$4,100.00
Total Fees	= \$4,100.00
<u>Less payments</u>	<u>= \$4,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondents Merrill Lynch and Lavner be and hereby are jointly and severally liable for:

Forum Fees	= \$3,375.00
Total Fees	= \$3,375.00
<u>Less Payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,375.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

/s/  
Stuart K. Furman  
Public Arbitrator, Presiding Chair

September 13, 2000  
Signature Date

/s/  
James F. Major, DDS  
Public Arbitrator

September 14, 2000  
Signature Date

/s/  
Alfonso Fernandez, Jr., Esq.  
Industry Arbitrator

September 13, 2000  
Signature Date

September 14, 2000  
Date of Service (For NASD-DR office use only)

Fee Summary

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$300.00
<u>Forum Fees</u>	= <u>\$3,375.00</u>
Total Fees	= \$3,675.00
<u>Less payments</u>	= <u>\$2,550.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1125.00

Respondent Merrill Lynch be and hereby is solely liable for:

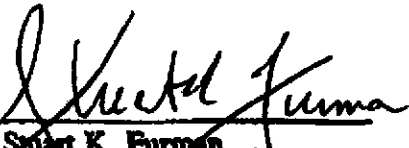
Member Fees	= \$4,100.00
Total Fees	= \$4,100.00
<u>Less payments</u>	= <u>\$4,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondents Merrill Lynch and Lavner be and hereby are jointly and severally liable for:

Forum Fees	= \$3,375.00
Total Fees	= \$3,375.00
<u>Less Payments</u>	= <u>\$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,375.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

  
Stuart K. Furman  
Public Arbitrator, Presiding Chair

9-13-00  
Signature Date

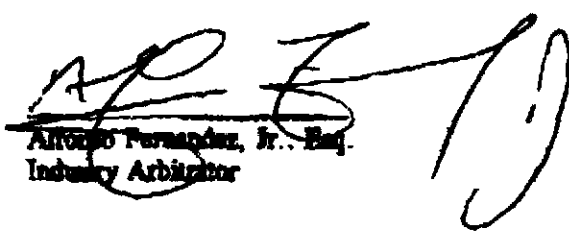
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James F. Major, DDS  
Public Arbitrator

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

Valley Forge Arbitration, Inc.

Arbitration No. 99-02303

Award Page 3

  
Alfonso Fernandez, Jr., Esq.  
Industry Arbitrator

9/13/2000  
Signature Date

Date of Service (For NASD-DR office use only)