

**Stipulated Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

SunTrust Securities, Inc.

Case No. 99-03079

Name of Respondent

Peter A. Foley

Name of Third-Party Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

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**REPRESENTATION OF PARTIES**

For SunTrust Securities, Inc. ("SunTrust"), hereinafter referred to as "Claimant": R. Hal Meeks, Jr., Esq. of the law firm of Pursley, Howell, Lowery & Meeks, LLP, Atlanta, Georgia.

For Peter A. Foley ("Foley"), hereinafter referred to as "Respondent": Barry L. Anderson, Esq. of the law firm of Schweber, Izenson & Anderson, LLP, Atlanta, Georgia.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"), hereinafter referred to as "Third-Party Respondent": Kathryn Jones, Vice President & Senior Counsel, Merrill, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: June 30, 1999.

Claimant signed the Uniform Submission Agreement: June 30, 1999.

Answer, "Counterclaim", and Third-Party Claim of Respondent filed on or about: August 6, 1999.

Respondent signed the Uniform Submission Agreement: August 6, 1999.

Statement of Answer filed by Third-Party Respondent on or about: November 2, 1999.

Third-Party Respondent signed the Uniform Submission Agreement: November 2, 1999.

**CASE SUMMARY**

Claimant alleged Respondent failed to pay the debit balance in his account.

Respondent denied the allegations contained in the Statement of Claim and asserted that Claimant has dealt with Respondent in bad faith and has been stubbornly litigious. Accordingly, Respondent asserted he is entitled to recover his expenses of litigation.

Further, Respondent asserted a third-party claim against Merrill which alleged that the negligence of Merrill was a direct and proximate cause of any alleged damages suffered by Claimant. Therefore, Respondent alleged he is entitled to common law indemnification and contribution from Merrill.

Third-Party Respondent denied the allegations contained in the third-party claim.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$19,621.60 plus interest thereon at margin rates through the date of the award, plus attorneys' fees, that all costs of the arbitration be cast upon Respondent and that Claimant be awarded the return of its filing fee.

Respondent requested that the claims of Claimant be dismissed with prejudice and that all costs of this action be cast upon Claimant; if any damages allegedly suffered by Claimant are cast upon Respondent, that he be awarded contribution and indemnification in the amount of such damages from Third-Party Respondent; and, that Respondent be awarded from Claimant his full costs and expenses, including attorneys' fees, incurred by him in the prosecution of this matter.

Third-Party Respondent requested that the claims against it be dismissed in their entirety, that the costs of this proceeding be assessed against Respondent, and that it be awarded such other and further relief as is deemed 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.

On or about May 12, 2000, NASD Regulation, Inc. was informed that all parties had entered into a settlement agreement. Thereafter, on or about June 5, 2000, Claimant and Respondent submitted to NASD Regulation, Inc. an executed Consent Award which is incorporated herein and made a part of this Award.

### **AWARD**

After considering the pleadings and the Consent Award, the undersigned Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimant SunTrust is hereby awarded recovery against Respondent Peter Foley in the principal amount of \$19,621.60, plus interest from March 9, 1999 through the date of this Award in the amount of \$1,725.38.

All costs of the arbitration are cast on Respondent.

This Award shall not be construed by any party as an admission of liability or wrongdoing.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$750.00
Third party claim filing fee	= \$125.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firms are parties.

Member surcharge	= \$400.00
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#### **Adjournment Fees**

Adjournments requested during these proceedings:

No adjournments were requested during these proceedings.

#### **Forum Fees and Assessments**

The Arbitrator assesses forum fees for each hearing session conducted. A hearing 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 Pre-hearing session with a single arbitrator x \$450.00	= \$450.00
Pre-hearing conference: February 18, 2000	1 session
Total Forum Fees	= \$450.00

Pursuant to the agreement of the parties, the Arbitrator has assessed the total forum fees of \$450.00 to Respondent.

#### **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**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$750.00
Member Fees	= \$400.00
Total Fees	= \$1,150.00
<u>Less payments</u>	<u>= \$1,150.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Respondent be and hereby is solely liable for:

Third-Party Filing Fee	= \$125.00
Forum Fees	= \$450.00
Total Fees	= \$575.00
<u>Less payments</u>	<u>= \$575.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Third-Party Respondent be and hereby is solely liable for:

Member Fees	= \$400.00
Total Fees	= \$400.00
<u>Less Payments</u>	<u>= \$400.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

**Arbitrator's Signature**

/s/

Harvey R. Linder, Esq.  
Public Arbitrator, Presiding Chair

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

June 27, 2000

Date of Service (For NASD office use only)

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$750.00
Member Fees	= \$400.00
Total Fees	= \$1,150.00
<u>Less payments</u>	<u>= \$1,150.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

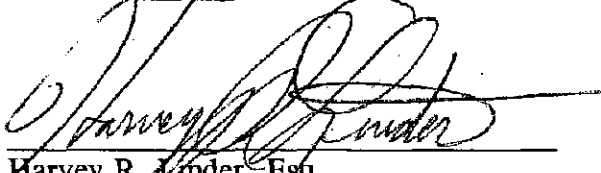
Respondent be and hereby is solely liable for:

Third-Party Filing Fee	= \$125.00
Forum Fees	= \$450.00
Total Fees	= \$575.00
<u>Less payments</u>	<u>= \$575.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Third-Party Respondent be and hereby is solely liable for:

Member Fees	= \$400.00
Total Fees	= \$400.00
<u>Less Payments</u>	<u>= \$400.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

**Arbitrator's Signature**

  
\_\_\_\_\_  
Harvey R. Linder, Esq.  
Public Arbitrator, Presiding Chair

6/19/00  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

IN THE MATTER OF THE ARBITRATION BETWEEN:

SUNTRUST SECURITIES, INC.,

Claimant,

v.

PETER A. FOLEY,

Respondent.

NASD Arbitration No. 99-03079

CONSENT AWARD

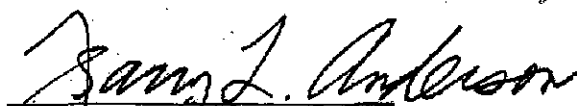
The parties consenting hereto, as evidenced by signatures below, SunTrust Securities is hereby awarded recovery against Respondent Peter A. Foley in the principal amount of \$19,621.60, plus interest from March 9, 1999 through the date of this award in the amount of \$1,725.38. All costs of the arbitration are cast on Respondent.

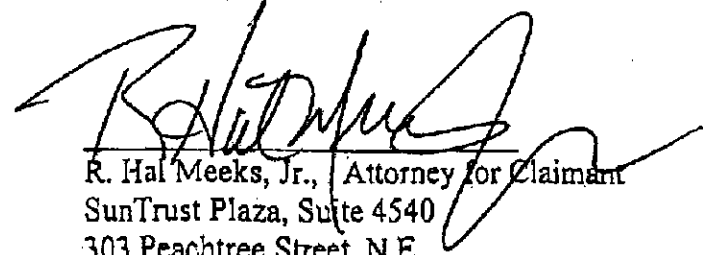
This Consent Award is hereby entered by the parties as part of a Settlement Agreement to resolve disputed claims. It shall not be construed by any party as an admission of liability or wrongdoing by Peter A. Foley.

This 19TH day of <sup>JUNE</sup> ~~MAY~~, 2000.

Arbitrator

Consented to:

  
Barry L. Anderson, Esq., Attorney for Respondent Foley  
Schweber, Izenon & Anderson, LLP  
Suite 275, Lenox Plaza  
3384 Peachtree Road, N.E.  
Atlanta, Georgia 30326-110

  
R. Hal Meeks, Jr., Attorney for Claimant  
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