

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

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In the Matter of the Arbitration Between:

Soheila Najafzadeh, (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc., and Nicholas A. Caruso, (Respondents)

Case Number: 99-04522

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Soheila Najafzadeh, hereinafter referred to as "Claimant", appeared *pro se*.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Nicholas A. Caruso ("Caruso"), hereinafter referred to as "Respondents": Kevin T. Duffy, Jr., Esq., Assistant Vice President, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 27, 1999.

Claimant signed the Uniform Submission Agreement: October 2, 1999.

Joint Statement of Answer filed by Respondents on or about: January 14, 2000.

Merrill signed the Uniform Submission Agreement: January 26, 2000.

Caruso did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: improper investment advice; failure to manage Claimant's account; and failure to follow Claimant's investment objective of income. Claimant's claim involved the Lord Abbot U.S. Government Securities Trust and the Merrill Lynch Developing Capital Markets Fund.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state claims upon which relief can be granted; Claimant is estopped from asserting the claims set forth in the Statement of Claim due to her own acts and conduct and the acts and conduct of her agents and those acting on her behalf; Claimant, 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; Claimant was negligent, failed to exercise due diligence, and was reckless in the supervision of her financial affairs and, in particular, the operation of her Merrill account at issue; and Claimant failed to mitigate her alleged damages, if any.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in an amount between \$133,300.00 and \$140,200.00, plus damages for emotional distress.

Respondents requested that the Statement of Claim be dismissed in its entirety and that the costs of this proceeding, including attorney's fees and forum fees, be assessed against Claimant.

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

Caruso did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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 be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$10,861.00 as compensatory damages.
2. All other requests for relief are hereby 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
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### **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, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

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

### **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 arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conferences: June 5, 2000	1 session
June 9, 2000	1 session
Two (2) Hearing sessions x \$1,125.00	= \$2,250.00
Hearing Date: November 14, 2000	2 sessions
Total Forum Fees	= \$4,500.00

1. The Panel has assessed \$2,250.00 of the forum fees against Claimant.
2. The Panel has assessed \$2,250.00 of the forum fees jointly and severally against Respondents.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$2,250.00
Total Fees	= \$2,550.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,550.00
2. Merrill be and hereby is solely liable for:

<u>Member Fees</u>	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$3,800.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 800.00

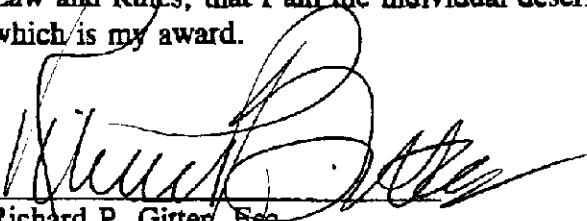
3. Respondents be and hereby are jointly and severally liable for:

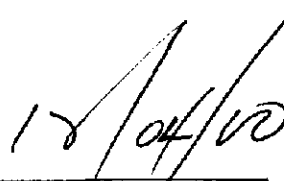
<u>Forum Fees</u>	= \$2,250.00
<u>Total Fees</u>	= \$2,250.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,250.00

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

**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.

  
Richard P. Gittery, Esq.  
Public Arbitrator, Presiding Chair

  
Signature Date

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Denis E. Coughlin  
Public Arbitrator

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Signature Date

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Wayne R. Jahns  
Industry Arbitrator

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Signature Date


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December 18, 2000  
Date of Service (For NASD office use only)

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Richard P. Gitter, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
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Denis E. Coughlin  
Public Arbitrator

DEC. 4, 2000  
\_\_\_\_\_  
Signature Date

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Wayne R. Jahns  
Industry Arbitrator

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Richard P. Gitter, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Denis E. Coughlin  
Public Arbitrator

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Signature Date

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Wayne R. Jahns  
Industry Arbitrator

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12/4/00  
Signature Date

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December 18, 2000  
Date of Service (For NASD office use only)