

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Richard W. Fahs, II (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc. (Respondent)

Case Number: 09-06623

Hearing Site: Hartford, Connecticut

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Nature of the Dispute: Customer vs. Member

Public Arbitrator Pilot Program/Majority Public Panel

**REPRESENTATION OF PARTIES**

Claimant Richard W. Fahs, II, hereinafter referred to as "Claimant": Nicholas J. Guiliano, Esq., Guiliano Law Firm, Philadelphia, PA.

Respondent Merrill Lynch, Pierce, Fenner & Smith, hereinafter referred to as "Respondent": William E. Mahoney, Jr., Esq., Stradley Ronon Stevens & Young LLP, Philadelphia, PA.

**CASE INFORMATION**

Statement of Claim filed on or about: November 20, 2009.  
Claimant signed the Submission Agreement: November 16, 2009.

Statement of Answer filed on or about: March 1, 2010.  
Respondent signed the Submission Agreement: December 21, 2009.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, suitability, violation of the Connecticut Uniform Securities Act, breach of fiduciary duty, negligent failure to supervise, and fraud. The causes of action relate to unspecified securities.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$177,000.00, lost income under the "well managed portfolio" theory of recovery, punitive damages, interest, attorneys' fees, costs of this suit, and any other relief that is just, fair and equitable.

Respondent requested dismissal of the Statement of Claim in its entirety, that the cost of

this proceeding, including attorneys' fees, be assessed against Claimant, and expungement of this matter and any related claim from un-named party Saly Ann Glassman's CRD record.

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

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

This case proceeded under the Public Arbitrator Pilot Program, which allows parties to choose whether to have a non-public arbitrator on the panel.

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. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$44,607.00.
2. Respondent is liable for and shall pay to Claimant interest in the amount of \$8,040.00. Interest is calculated at the rate of 6% per annum from July 1, 2008 to June 30, 2011.
3. Respondent is liable for and shall pay to Claimant attorneys' fees in the amount of \$30,000.00. The Panel awarded attorneys' fees pursuant to Sections 36b-5(a) and 36b-29(b)(1) of the Connecticut General Statutes.
4. Respondent is liable for and shall pay to Claimant \$300.00 to reimburse Claimant for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution.
5. Respondent's expungement request on behalf of un-named Saly Ann Glassman is denied.
6. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial claim filing fee

= \$1,425.00

*In accordance with the "Award" section above, Respondent is liable for and shall pay to Claimant \$300.00 to reimburse Claimant for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution.*

**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. Accordingly, as a party, Merrill Lynch, Pierce, Fenner & Smith Incorporated, is assessed the following:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

April 19-21, 2011 adjournment by Claimant WAIVED

**Contested Motion for Issuance of a Subpoena Fees**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena	
<u>(1) one arbitrator @ \$200.00</u>	<u>= \$200.00</u>
Total Contested Motion for Issuance of Subpoenas Fees	= \$200.00

1. The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fees to Claimant.
2. The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fees to Respondent.

**Hearing Session Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with a single Arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: December 17, 2010	1 session
Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences: May 25, 2010	1 session
February 15, 2011	1 session
Six (6) Hearing sessions @ \$1,125.00	= \$6,750.00
Hearing Dates: June 28, 2011	2 sessions
June 29, 2011	2 sessions
June 30, 2011	2 sessions
<u>Total Hearing Session Fees</u>	<u>= \$9,450.00</u>

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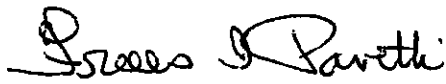
1. The Panel has assessed \$4,725.00 of the hearing session fees to Claimant.
2. The Panel has assessed \$4,725.00 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Francis J. Pavetti	-	Public Arbitrator, Presiding Chairperson
Janet L. Brown	-	Public Arbitrator
Jane Venckus Zirlis	-	Non-Public Arbitrator

**Arbitrators' Signatures**



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Francis J. Pavetti  
Public Arbitrator

7 - 21 - 2011

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

\_\_\_\_\_  
Janet L. Brown  
Public Arbitrator

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

\_\_\_\_\_  
Jane Venckus Zirlis  
Non-Public Arbitrator

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

July 26, 2011  
Date of Service (For FINRA Dispute Resolution use only)


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Jane Venckus Zirlis - Non-Public Arbitrator

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Public Arbitrator

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Janet L. Brown  
Public Arbitrator

7-21-11  
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Signature Date

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Non-Public Arbitrator

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Signature Date

  
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Jane Venckus Zirfis  
Non-Public Arbitrator

7/20/2011  
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Signature Date

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\_\_\_\_\_  
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