

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

Bob J. Starnes
The Starnes Family Trust

Case Number: 09-05842

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Tampa, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Bob J. Starnes and The Starnes Family Trust, hereinafter collectively referred to as "Claimants": Jeffrey P. Coleman, Esq. and Jennifer Newsom, Esq., Coleman Law Firm, Clearwater, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Jason S. Haselkorn, Esq., Casey Ciklin Lubitz Martens & O'Connell, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: October 8, 2009.

Claimant Bob J. Starnes signed the Submission Agreement: September 19, 2009.

Claimant The Starnes Family Trust signed the Submission Agreement: September 19, 2009.

Respondent signed the Submission Agreement: November 2, 2009.

Respondent filed its Statement of Answer on or about: January 15, 2010.

CASE SUMMARY

Claimants asserted the following causes of action: (1) violation of the Florida Securities and Investor Protection Act – securities fraud; (2) common law fraud; (3) breach of fiduciary duty; (4) negligence; and, (5) breach of contract. The causes of action relate to the Merrill Lynch Retirement Plus Variable Annuity in Claimants' account.

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, Claimants requested: (1) compensatory damages in the expected amount of \$1,000,000.00; (2) prejudgment interest; (3) attorneys' fees; (4)

costs; and, (5) such other relief as the undersigned Arbitrators, (the "Panel") deemed just and equitable.

In its Answer, Respondent requested that the undersigned arbitrators (the "Panel") deny Claimants' claim in its entirety.

At the hearing, Respondent requested expungement of the Central Registration Depository ("CRD") record of the non-party broker Stephen John Picazio, Sr.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

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 and 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:

Respondent is liable on the claim of negligence and shall pay to Claimants \$125,000.00 in compensatory damages and \$6,000.00 in costs.

Respondent's motion to expunge the non-party broker Stephen John Picazio, Sr.'s CRD record is denied.

Claimant's claim for relief for violation of the Florida Securities and Investor Protection Act is denied.

Any and all claims for relief not specifically addressed herein, including the parties' requests for attorneys' fees, are 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 = \$1,575.00

**The filing fee is made up of a non-refundable and a refundable portion.*

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. Accordingly, Respondent is assessed the following:

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) Decision on a discovery-related motion on the papers with (1) one arbitrator @ \$200.00	= \$ 200.00
Respondent submitted (1) one discovery-related motion	

Total Discovery-Related Motion Fees	= \$ 200.00
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The Panel has assessed \$100.00 of the discovery related motion fee to Claimants, jointly and severally.

The Panel has assessed \$100.00 of the discovery related motion fee to Respondent.

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 (1) one arbitrator @ \$200.00 (maximum of \$600)	= \$200.00
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Total Contested Motion for Issuance of Subpoenas Fees	= \$200.00
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The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fee to Claimants, jointly and severally.

The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fee to Respondent.

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$1,350.00
Pre-hearing conferences: May 25, 2010	1 session
August 31, 2010	1 session
December 22, 2010	1 session

One (1) Pre-hearing session with the Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: March 16, 2010	1 session

Six (6) Hearing sessions with the Panel @ \$1,200.00/session	= \$7,200.00
Hearing Dates: February 1, 2011	2 sessions
February 2, 2011	2 sessions

February 3, 2011 2 sessions

Total Hearing Session Fees = \$9,750.00

The Panel has assessed \$4,875.00 of the hearing session fees to Claimants, jointly and severally.

The Panel has assessed \$4,875.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

William H. Fleece - *Public Arbitrator, Presiding Chairperson*
Andrea Bailey - *Public Arbitrator*
Nicholas G. Dukas - *Non-Public Arbitrator*

Concurring Arbitrators' Signatures

 / S /
William H. Fleece
Public Arbitrator, Presiding Chairperson

02/17/2011
Signature Date

 / S /
Andrea Bailey
Public Arbitrator

02/17/2011
Signature Date

 / S /
Nicholas G. Dukas
Non-Public Arbitrator

02/16/2011
Signature Date

February 17, 2011
Date of Service (For FINRA Dispute Resolution use only)

February 3, 2011 2 sessions

Total Hearing Session Fees = \$9,750.00

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The Panel has assessed \$4,875.00 of the hearing session fees to Respondent.

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ARBITRATION PANEL

<i>William H. Fleece</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Andrea Bailey</i>	-	<i>Public Arbitrator</i>
<i>Nicholas G. Dukas</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



William H. Fleece
Public Arbitrator, Presiding Chairperson

2/17/2011
Signature Date

Andrea Bailey
Public Arbitrator

Signature Date

Nicholas G. Dukas
Non-Public Arbitrator

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William H. Fleece
Public Arbitrator, Presiding Chairperson

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Andrea Bailey
Public Arbitrator

Signature Date

Nicholas G. Dukas

Nicholas G. Dukas
Non-Public Arbitrator

February 16, 2011

Signature Date

Date of Service (For FINRA Dispute Resolution use only)