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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 06-02967

Angelo Skulas  
Robin Skulas and Angelo Skulas JTWROS  
West Virginia Emergency Medical Systems, Inc.  
Emergency Med System Ltd.  
Robin Skulas and Angelo Skulas JTWROS  
Robin Skulas and Angelo Skulas JTWROS  
Angelo Skulas Pledged to ML Bank USA  
Robin Skulas and Angelo Skulas JTWROS Pledged Coll Acct for MLB&T  
Robin Skulas and Angelo Skulas JTWROS Pledged Coll Acct for MLD&T  
Robin Skulas and Angelo Skulas JTWROS Pledged Coll Acct for MLB&T  
Robin Skulas and Angelo Skulas JTWROS Pledged Collateral to MLBFS  
MLPF&S Cust FPO Angelo Skulas IRA FBO Angelo Skulas

Names of the Respondents

Hearing Site: Boca Raton, Florida

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Jeffrey Shover

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Angelo Skulas, Robin Skulas and Angelo Skulas JTWROS, West Virginia Emergency Medical Systems, Inc., Emergency Med System Ltd., Robin Skulas and Angelo Skulas JTWROS, Robin Skulas and Angelo Skulas JTWROS, Angelo Skulas Pledged to ML Bank USA, Robin Skulas and Angelo Skulas JTWROS Pledged Coll Acct for MLB&T, Robin Skulas and Angelo Skulas JTWROS Pledged Coll Acct for MLD&T, Robin Skulas and Angelo Skulas JTWROS Pledged Coll Acct for MLB&T, Robin Skulas and Angelo Skulas JTWROS Pledged Collateral to MLBFS, and MLPF&S Cust FPO Angelo Skulas IRA FBO Angelo Skulas, hereinafter collectively referred to as "Claimants": **Scott L. Silver, Esq.** and Randall C. Place, Esq., Blum & Silver, LLP, Coral Springs, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Jeffrey Shover ("Shover"), hereinafter collectively referred to as "Respondents": Keith Olin, Esq. and Seth V. Alhadeff, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: June 15, 2006.  
Claimants signed the Uniform Submission Agreements: January 1, 2006.

Motion to Dismiss filed by Respondents on or about: October 20, 2006.  
Statement of Answer filed by Respondents on or about: October 28, 2006.  
Response to Motion to Dismiss filed by Claimants on or about: November 7, 2006.  
First Amended Statement of Claim filed by Claimants on or about: March 12, 2007.  
Answer to Claimants' First Amended Statement of Claim filed by Respondents on or about: April 23, 2007.  
Respondents did not file executed Uniform Submission Agreements.

### **CASE SUMMARY**

Claimants asserted the following causes of action against Respondents: 1) violation of industry rules, including but not limited to NYSE's "Know your customer" standard (Rule 405) and NASD's customer suitability standard (Rule 2310); 2) breach of contract; 3) breach of fiduciary duty; 4) common law fraud; and, 5) negligence. Claimants further asserted the cause of action of negligent hiring, retention and supervision of employees against Respondent MLPFS. The causes of action relate to, among other things, the following: 1) margin use; 2) Claimants' co-signing of a loan to another customer of Respondent MLPFS; and, 3) Claimants' investment in various equities, either directly or through Respondent MLPFS' proprietary investment vehicles or money manager program, and the use of margin.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim, as amended, and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$1,000,000.00, interest at the legal rate from the date of purchase or reasonable market return, rescission, an unspecified amount of punitive damages, costs, and such other relief as deemed just and proper by the Panel.

Respondents requested that the Statement of Claim, as amended, be dismissed in its entirety and that the Panel recommend the expungement of all references to this action from the NASD Central Registration Depository ("CRD") records of Respondent Shover. Respondent Shover reiterated his request for expungement during the evidentiary hearing.

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

Respondents MLPFS and Shover did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Respondents filed a motion to dismiss in which they asserted, among other things, that the Statement of Claim does not comply with Rule 10302(b) of the Code and lacks specificity required by substantive law. In response, Claimants asserted that Respondents did not satisfy the standard for a motion to dismiss and that the claims were pled sufficiently. On or about

December 22, 2006, following a telephonic pre-hearing conference with the parties, the Panel issued an Order that, among other things, denied Respondents' motion to dismiss and directed Claimants to file a more definitive Statement of Claim.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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:

Respondent MLPFS is liable on the claims of failure to supervise, breach of contract, breach of fiduciary duty and negligence, and shall pay to Claimants compensatory damages in the amount of \$90,000.00.

Respondent Shover is liable on the claims of breach of fiduciary duty, breach of contract, negligence and violation of Rule 405 (NYSE's "Know your customer" standard), and shall pay to Claimants compensatory damages in the amount of \$30,000.00.

The Panel finds that the conduct of Respondents MLPFS and Shover rises to the level defined in Florida Statute 768.72 for intentional misconduct and gross negligence. In making these findings, the Panel specifically notes the following:

1. Respondent Shover holds the title of Certified Financial Manager but demonstrated no understanding of the financial planning process in the production and presentation of "Financial Forum" reports. These actions demonstrated gross negligence and disregard for the process, and for Claimants' welfare.
2. Respondent Shover was aware that Claimants ascribed to him total personal financial management based on the fees being paid. Respondent Shover abused this understanding and relationship by not informing Claimants that the fees were in lieu of commissions.
3. Respondent Shover was grossly negligent in providing documents for Claimants' signatures in blank, knowing that Claimants trusted him implicitly.
4. Respondent Shover's actions toward Claimants and their financial well-being were motivated by retaining assets under management rather than for the benefit of Claimants.
5. Respondent MLPFS provided little or no supervision of Respondent Shover.
6. Respondent MLPFS allowed Respondent Shover to encourage and facilitate Claimants' guarantee of a loan, and, in the process, knowingly reduced Respondent MLPFS' financial risk by the extent of Claimants' participation. By sharing and/or encouraging Claimants' investment and failing to disclose their involvement, Respondents placed their own self-interests above those of Claimants.
7. Respondent MLPFS allowed unsigned documents to be sent from Respondent Shover and be received back from Claimants.

8. Respondent MLPFS allowed the production of "Financial Forum" reports based on incomplete and inaccurate data, which rendered the reports worthless, yet Respondent MLPFS charged a fee and represented the reports as complete.
9. Respondent MLPFS did not follow its own Compliance Manual rules and allowed Respondent Shover to mislead Claimants.
10. Respondent MLPFS allowed Respondent Shover to misrepresent himself as a financial planner while knowing that he did not possess the knowledge or the skills of a financial planner, thereby misleading Claimants.

Accordingly, Respondents shall pay to Claimants punitive damages in the amount of \$120,000.00, of which Respondent MLPFS is solely liable for \$90,000.00 and Respondent Shover is solely liable for \$30,000.00.

Any and all claims for relief not specifically addressed herein, including Respondent Shover's request for expungement, are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$ 375.00

#### **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. Respondent MLPFS is a party to this dispute and a member of NASD. Accordingly, the following fees have been assessed to Respondent MLPFS:

|                            |                     |
|----------------------------|---------------------|
| Member surcharge           | = \$2,250.00        |
| Pre-hearing process fee    | = \$ 750.00         |
| <u>Hearing process fee</u> | <u>= \$4,000.00</u> |
| Total Member Fees          | = \$7,000.00        |

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred during this proceeding.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were incurred during this proceeding.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred during this proceeding.

**Forum 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:

Two (2) Decisions on discovery-related motions on the papers = \$ 400.00  
with one (1) arbitrator @\$200.00/decision  
Claimants submitted (2) discovery-related motions

One (1) Decision on a contested motion for the issuance of a subpoena = \$ 200.00  
with one (1) arbitrator @\$200.00

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: May 2, 2007 1 session

Three (3) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 3,600.00  
Pre-hearing conferences: November 1, 2006 1 session  
December 20, 2006 1 session  
April 25, 2007 1 session

Twelve (12) Hearing sessions with the Panel @ \$1,200.00/session = \$14,400.00  
Hearing Dates: June 4, 2007 3 sessions  
June 5, 2007 2 sessions  
June 6, 2007 2 sessions  
June 7, 2007 3 sessions  
June 8, 2007 2 sessions

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**Total Forum Fees = \$19,050.00**

The Panel has assessed the total forum fees of \$19,050.00 to Respondent MLPFS.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.



No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

|                                     |      |               |
|-------------------------------------|------|---------------|
| Initial Filing Fee                  | = \$ | 375.00        |
| Total Fees                          | = \$ | 375.00        |
| <u>Less payments</u>                | = \$ | <u>375.00</u> |
| Balance Due NASD Dispute Resolution | = \$ | 0.00          |

Respondent MLPFS is solely liable for:

|                                     |      |                 |
|-------------------------------------|------|-----------------|
| Member Fees                         | = \$ | 7,000.00        |
| Forum Fees                          | = \$ | 19,050.00       |
| Total Fees                          | = \$ | 26,050.00       |
| <u>Less payments</u>                | = \$ | <u>7,000.00</u> |
| Balance Due NASD Dispute Resolution | = \$ | 19,050.00       |

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

|                               |   |   |
|-------------------------------|---|---|
| <i>Joseph Leonard Friedes</i> | - | <i>Public Arbitrator, Presiding Chairperson</i> |
| <i>Martin P. Bergman</i>      | - | <i>Public Arbitrator</i>                        |
| <i>Michael S. Kozlow, CFP</i> | - | <i>Non-Public Arbitrator</i>                    |

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Joseph Leonard Friedes  
Public Arbitrator, Presiding Chairperson

7-3-07  
Signature Date

\_\_\_\_\_  
Martin P. Bergman  
Public Arbitrator

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

\_\_\_\_\_  
Michael S. Kozlow, CFP  
Non-Public Arbitrator

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

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

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

|  |             |
|--|-------------|
| <u>Initial Filing Fee</u>                  | = \$ 375.00 |
| <u>Total Fees</u>                          | = \$ 375.00 |
| <u>Less payments</u>                       | = \$ 375.00 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 0.00   |

Respondent MLPFS is solely liable for:

|  |               |
|--|---------------|
| <u>Member Fees</u>                         | = \$ 7,000.00 |
| <u>Forum Fees</u>                          | = \$19,050.00 |
| <u>Total Fees</u>                          | = \$26,050.00 |
| <u>Less payments</u>                       | = \$ 7,000.00 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$19,050.00 |

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Joseph Leonard Friedes  
Public Arbitrator, Presiding Chairperson

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

*Martin P. Bergman*  
\_\_\_\_\_  
Martin P. Bergman  
Public Arbitrator

*July 3, 2007*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Michael S. Kozlow, CFP  
Non-Public Arbitrator

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

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Claimants are jointly and severally liable for:

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| Balance Due NASD Dispute Resolution | = \$ 0.00          |

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|                                     |                      |
|-------------------------------------|----------------------|
| Member Fees                         | = \$ 7,000.00        |
| Forum Fees                          | = \$19,050.00        |
| Total Fees                          | = \$26,050.00        |
| <u>Less payments</u>                | <u>= \$ 7,000.00</u> |
| Balance Due NASD Dispute Resolution | = \$19,050.00        |

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Signature Date

\_\_\_\_\_  
Martin P. Bergman  
Public Arbitrator

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

  
\_\_\_\_\_  
Michael S. Kozlow, CFP  
Non-Public Arbitrator

7/2/2007  
\_\_\_\_\_  
Signature Date

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