

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Gray Ingram

Case Number: 09-07122

Respondent  
Merrill Lynch, Pierce,  
Fenner & Smith Incorporated

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

Public Arbitrator Pilot Program/All Public Panel

**REPRESENTATION OF PARTIES**

For Gray Ingram, hereinafter referred to as "Claimant": Scott J. Link, Esq., Ackerman Link & Sartory, P.A., West Palm Beach, Florida.

For Merrill Lynch, Pierce, Fenner & Smith Incorporated, hereinafter referred to as "Respondent": Neil S. Baritz, Esq. and Tammie Barrow, Esq., Baritz & Colman LLP, Boca Raton, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: December 22, 2009.

Claimant signed the Submission Agreement: December 22, 2009.

Statement of Answer filed by Respondent on or about: April 6, 2010.

Respondent signed the Submission Agreement: January 19, 2010.

**CASE SUMMARY**

Claimant asserted the following causes of action: (1) negligence (including violations of industry rules); (2) suitability; (3) negligent supervision; (4) misrepresentations and omissions; (5) breach of fiduciary duty; and, (6) breach of contract. The causes of action relate to alleged mismanagement of Claimant's portfolio through the investment in various unspecified equities.

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: (1) compensatory damages in excess of \$5,000,000.00, plus interest; (2) costs; and, (3) such other relief as the Panel determined to be fair and appropriate.

Respondent requested that the Panel: (1) dismiss this action in its entirety; (2) award Respondent costs incurred in connection with its defense of this matter; and, (3) such further relief as the Panel deem just and proper.

During the evidentiary hearing, Respondent requested expungement of the Central Registration Depository ("CRD") on behalf of non-parties Scott Bass (CRD No. 2206579), Roger Hunt (CRD No. 1865861) and Erick Ellsweig (CRD No. 4501784).

### **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 in-person, recorded 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:

The Panel dismissed Claimant's claims in their entirety with prejudice.

After considering the testimony of the parties and reviewing the exhibits submitted, the Panel denied Respondent's requests for expungement of non-parties Scott Bass (CRD No. 2206579), Roger Hunt (CRD No. 1865861) and Erick Ellsweig (CRD No. 4501784).

Respondent is liable for and shall reimburse Claimant the sum of \$600.00, representing the non-refundable portion of the initial claim filing fee paid by Claimant to FINRA Dispute Resolution.

Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$1,800.00
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/s/  

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*Michael D. Felton*  
Public Arbitrator

May 10, 2011  

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Signature Date

/s/  

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*Philip L. Manczak*  
Public Arbitrator

May 10, 2011  

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Signature Date

May 11, 2011  

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Date of Service (For FINRA Dispute Resolution Office use only)

**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, as a party, Respondent is assessed the following:

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

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

One (1) Pre-hearing session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: June 17, 2010	1 session
Eight (8) Hearing sessions @ \$1,200.00/session	= \$ 9,600.00
Hearing Dates: April 26, 2011	2 sessions
April 27, 2011	2 sessions
April 28, 2011	2 sessions
April 29, 2011	2 sessions

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Total Hearing Session Fees = \$10,800.00

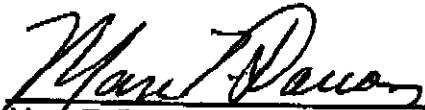
The Panel has assessed the total hearing session fees of \$10,800.00 to Respondent.

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

**ARBITRATION PANEL**

Marc T. Danon	-	Public Arbitrator, Presiding Chairperson
Michael d Felton	-	Public Arbitrator
Phillip L. Manczak	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Marc T. Danon  
Public Arbitrator, Presiding Chairperson

  
Signature Date

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Arbitration No. 09-07122  
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Michael D. Felton  
Public Arbitrator

5/10/11

Signature Date

Philip L. Manczak  
Public Arbitrator

Signature Date

Date of Service (For FINRA Dispute Resolution Office use only)

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*Michael d. Felton*  
Public Arbitrator

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Signature Date

  
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*Philip L. Manczak*  
Public Arbitrator

*5/10/11*  
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