

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Staton Family Investments, Ltd.  
Daniel C. Staton

Case Number: 08-04586

Respondents

Merrill Lynch, Pierce, Fenner & Smith Inc.  
Merrill Lynch Bank USA  
Merrill Lynch Bank & Trust Company FSB  
Christopher Dale Jacobs  
Margot M. Dwyer  
James R. Dickson  
Gerald Andres Schwinn, Jr.  
The Jacobs Team

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Staton Family Investments, Ltd. and Daniel C. Staton, hereinafter collectively referred to as "Claimants": Martin P. Russo, Esq. and Sarah Y. Khurana, Esq., Gusrae, Kaplan, Bruno & Nusbaum PLLC, New York, New York.

For Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), Merrill Lynch Bank USA ("ML Bank"), Merrill Lynch Bank & Trust Company FSB ("MLB&T"), Christopher Dale Jacobs ("Jacobs"), Margot M. Dwyer ("Dwyer"), James R. Dickson ("Dickson"), Gerald Andres Schwinn, Jr. ("Schwinn") and The Jacobs Team ("Jacobs Team"): Richard L. Martens, Esq. and A. Patricia Morales Christiansen, Esq., Casey Ciklin Lubitz Martens & O'Connell, West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: December 4, 2008.  
Claimant Staton Family Investments, Ltd. signed the Submission Agreement: November 20, 2008.  
Claimant Daniel C. Staton signed the Submission Agreement: July 2, 2009.  
Statement of Answer filed by Respondents Merrill Lynch, Jacobs, Dwyer, Dickson, Schwinn and Jacobs Team on or about: August 3, 2009.  
Respondent Merrill Lynch signed the Submission Agreement: January 16, 2009.  
Respondent Jacobs signed the Submission Agreement: February 27, 2009.  
Respondent Dwyer signed the Submission Agreement: February 26, 2009.  
Respondent Dickson signed the Submission Agreement: March 2, 2009.  
Respondent Schwinn signed the Submission Agreement: March 23, 2009.  
Respondent Jacobs Team signed the Submission Agreement: March 20, 2009.

Respondents ML Bank and MLB&T did not file Statements of Answers or signed Submission Agreements.

Amended Statement of Claim filed by Claimants on or about: June 17, 2009.

Statement of Answer to Amended Statement of Claim filed by Respondents Merrill Lynch, Jacobs, Dwyer, Dickson, Schwinn and the Jacobs Team on or about: July 27, 2009.

### **CASE SUMMARY**

In their Statement of Claim, as amended, Claimants asserted the following causes of action: 1) securities and common law fraud against Respondents Merrill Lynch, ML Bank, MLB&T, Jacobs, Dickson, Dwyer and the Jacobs Team; 2) breach of fiduciary duty against Respondents Merrill Lynch, ML Bank, MLB&T, Jacobs, Dickson, Dwyer and the Jacobs Team; 3) breach of contract against Respondents Merrill Lynch, ML Bank and MLB&T; 4) breach of the implied covenant of good faith and fair dealing against Respondents Merrill Lynch, ML Bank and MLB&T; 5) breach of fiduciary duty against Respondents Merrill Lynch, Jacobs and the Jacobs Team; 6) breach of fiduciary duty against Respondents Merrill Lynch, ML Bank, MLB&T, Jacobs, Dickson, Dwyer and the Jacobs Team; 7) negligence against Respondents Merrill Lynch, ML Bank, MLB&T, Jacobs, Dickson, Dwyer, and the Jacobs Team; 8) negligent misrepresentation against Respondents Merrill Lynch, Jacobs, and the Jacobs Team; 9) common law fraud against Respondents Merrill Lynch, ML Bank, Jacobs and the Jacobs Team; 10) promissory estoppels against Respondents Merrill Lynch, ML Bank, Jacobs and the Jacobs Team; 11) unauthorized trading against Respondents Merrill Lynch, Jacobs and the Jacobs Team; 12) violations of Florida's Deceptive and Unfair Trade Practices Act against Respondents Merrill Lynch, ML Bank, MLB&T, Jacobs, Dickson, Dwyer and the Jacobs Team; 13) violations of Florida's Civil Theft Statute against Respondents Merrill Lynch, ML Bank, MLB&T, Jacobs, Dickson, Dwyer and the Jacobs Team; 14) negligent supervision against Respondents Merrill Lynch, Dickson and Schwinn; and 15) control person liability against Respondents Merrill Lynch, Dickson and Schwinn. The causes of action relate to Respondents' alleged illegal seizure and theft of 1,260,000 shares of common stock of Duke Realty Corporation ("DRE") from Claimants' accounts.

Unless specifically admitted in their Answers, Respondents Merrill Lynch, Jacobs, Dwyer, Dickson, Schwinn and the Jacobs Team denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested compensatory damages in the amount of \$300,000,000.00, treble damages pursuant to §772.11(1) of Florida's Civil Theft Statute in the amount of \$900,000,000.00 or, in the alternative, an award compelling Respondents to deliver to Claimants 1,260,000 shares of DRE and pay to Claimants: (a) the actual dividends paid upon those shares from 10/9/08 through the date that the shares are returned, plus interest and, (b) all other damages incurred by Claimants, including but not limited to, capital gains taxes, loss of investment opportunities, emotional distress, embarrassment and damage to reputation. In addition, Claimants requested costs and expenses, attorneys' fees and punitive damages in the amount of \$50,000,000.00.

At the close of the hearing, Claimant Staton Family Investments, Ltd. requested taxes in the amount of \$854,000.00; loss from sale of shares in the amount of \$327,602.00; loss of dividends over lifetime in the amount of \$14,879,721.00; losses from bonds in the amount of \$4,500,000.00; and, treble punitive damages.

In their Statement of Answer, Respondents Merrill Lynch, Jacobs, Dickson, Dwyer, Schwinn and the Jacobs Team requested that the Panel dismiss the Statement of Claim and grant an award of costs, attorneys' fees and such other relief as this Panel deemed just and proper. In addition, Respondents Jacobs, Dickson, Dwyer and Schwinn requested that the Panel grant expungement of their Central Registration Depository (the "CRD") records.

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

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

Respondents ML Bank and MLB&T are not members of FINRA and did not voluntarily submit to FINRA Dispute Resolution's jurisdiction.

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:

At the commencement of the evidentiary hearing, the parties stipulated that Claimant Daniel C. Staton's claims had no basis. Accordingly, the Panel determined to dismiss all of Claimant Daniel C. Staton's claims for relief, with prejudice.

Respondents ML Bank, MLB&T and Merrill Lynch had a duty and breached the duty which resulted in damage to Claimant. Respondents ML Bank, MLB&T and Merrill Lynch are liable, jointly and severally, on the claims of breach of fiduciary duty and shall pay to Claimant Staton Family Investments, Ltd. compensatory damages in the amount of \$8,100,000.00.

Respondents Jacobs, Dickson, Dwyer and Schwinn's request for expungement of their CRD records is denied.

Claimant Staton Family Investments, Ltd.'s claims against Respondents Jacobs, Dickson, Dwyer, Schwinn and the Jacobs Team are denied.

Any and all claims for relief not specifically addressed herein, including Claimant Staton Family Investments, Ltd.'s request for damages pursuant to Florida's Civil Theft Statute and for punitive damages and Claimant Staton Family Investments, Ltd. and

Respondents Merrill Lynch, Jacobs, Dwyer, Dickson, Schwinn and the Jacobs Team's requests for attorneys' fees, are denied.

### FEES

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

#### Filing Fees

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

Initial claim filing fee = \$1,800.00

*\*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, as a party, Respondent Merrill Lynch is assessed the following:

Member surcharge = \$ 3,750.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 5,500.00

#### 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

Claimant submitted one discovery-related motion

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Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed \$100.00 of the discovery-related motion fee jointly and severally to Claimants.

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

#### 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  
(3) Three arbitrators @ \$200.00 (maximum of \$600) = \$ 600.00

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Total Contested Motion for Issuance of Subpoenas Fees = \$ 600.00

The Panel has assessed \$300.00 of the contested motion for issuance of subpoenas fee jointly and severally to Claimants.

The Panel has assessed \$300.00 of the contested motion for issuance of subpoenas fee to Respondent Merrill Lynch.

**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 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/session	= \$ 450.00
Pre-hearing conference: December 22, 2009	1 session
Three (3) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$ 3,600.00
Pre-hearing conferences: May 13, 2009	1 session
March 8, 2010	1 session
August 3, 2010	1 session
Twenty-five (25) Hearing sessions @ \$1,200.00/session	= \$30,000.00
Hearing Dates: January 18, 2009	2 sessions
January 19, 2009	2 sessions
January 20, 2009	2 sessions
February 16, 2010	2 sessions
February 17, 2010	2 sessions
February 18, 2010	3 sessions
March 9, 2011	2 sessions
March 10, 2011	2 sessions
March 11, 2011	2 sessions
June 20, 2011	2 sessions
June 21, 2011	2 sessions
June 22, 2011	2 sessions
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Total Hearing Session Fees	= \$34,050.00

The Panel has assessed \$17,025.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$17,025.00 of the hearing session fees to Respondent Merrill Lynch.

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

**ARBITRATION PANEL**

<i>Frances D. Sheehy</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Allen Robin</i>	-	<i>Public Arbitrator</i>
<i>Morton D. Siegel</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

      /s/        
Allen Robin  
Public Arbitrator

07/20/2011  
Signature Date

      /s/        
Morton D. Siegel  
Non-Public Arbitrator

07/18/2011  
Signature Date

**Dissenting Arbitrator's Signature**

      /s/        
Frances D. Sheehy  
Public Arbitrator, Presiding Chairperson

07/18/2011  
Signature Date

July 21, 2011  
Date of Service (For FINRA Dispute Resolution office use only)

**ARBITRATION PANEL**

*Frances D. Sheehy* - *Public Arbitrator, Presiding Chairperson*  
*Allen Robin* - *Public Arbitrator*  
*Morton D. Siegel* - *Non-Public Arbitrator*

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Allen Robin  
Public Arbitrator

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

\_\_\_\_\_  
Morton D. Siegel  
Non-Public Arbitrator

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

**Dissenting Arbitrator's Signature**

\_\_\_\_\_  
Frances D. Sheehy  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Allen Robin  
Public Arbitrator

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

  
Morton D. Siegel  
Non-Public Arbitrator

7/18/2011  
Signature Date

**Dissenting Arbitrator's Signature**

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Frances D. Sheehy  
Public Arbitrator, Presiding Chairperson

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<i>Allen Robin</i>	-	<i>Public Arbitrator</i>
<i>Morton D. Siegel</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

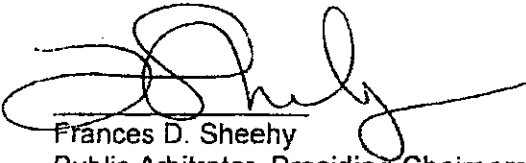
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Non-Public Arbitrator

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Signature Date

**Dissenting Arbitrator's Signature**

  
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Frances D. Sheehy  
Public Arbitrator, Presiding Chairperson

*7-18-2011*  
\_\_\_\_\_  
Signature Date

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