

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Willard Lee Rumley, III  
Albert Alexander Montague

Case Number: 09-02428

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Associated Person vs. Member.

**REPRESENTATION OF PARTIES**

For Willard Lee Rumley, III and Albert Alexander Montague, hereinafter collectively referred to as "Claimants": Michael S. Taaffe, Esq. and Michael D. Bressan, Esq., Shumaker, Loop & Kendrick, LLP, Sarasota, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Catherine S. Ryan, Esq. and John T. McDonald, Esq., Reed Smith, LLP, Pittsburgh, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on or about: April 29, 2009.  
Claimants signed the Submission Agreement: May 12, 2009.  
Statement of Answer filed by Respondent on or about: July 9, 2009.  
Respondent signed the Submission Agreement: July 9, 2009.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) breach of contract; 2) breach of duty of good faith and fair dealing; 3) breach of fiduciary duty; 4) unjust enrichment; 5) constructive trust; and, 6) conversion. The causes of action relate to Claimants' employment relationship with Respondent.

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) that Respondent place the contents of the Claimants' Financial Advisor Capital Accumulation Award Plan ("FACAAP") and Growth Award plans in trust pending resolution of this dispute; 2) that Respondent vest

and pay Claimants the value of their FACAAP and Growth Award plans as defined in the plan agreements (at least \$1,388,898.00); 3) an unspecified amount of damages to compensate Claimants due to Respondent's breach of its fiduciary duty and duty of good faith and fair dealing; 4) punitive damages due to Respondent's intentional breach of contract and inappropriate retention of Claimants' equity compensation; 5) daily interest at the Florida statutory rate based on the value of their unpaid FACAAP and Growth Award as of the date of resignation until full payment by Respondent; 6) attorneys' fees and costs incurred in obtaining the wrongfully withheld FACAAP and Growth Award; and, 7) other relief deemed just and proper.

In the Answer to the Statement of Claim, Respondent requested dismissal of the Statement of Claim.

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

The undersigned arbitrators, (the "Panel") acknowledge that they have each read the pleadings and other materials filed by the parties.

During the evidentiary hearing, Claimants withdrew Count V of their Statement of Claim which requested that the Panel impose of a constructive trust by Respondent and in favor of Claimants.

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:

Respondent is found liable for breach of contract and shall pay to Claimant Willard Lee Rumley, III compensatory damages in the amount of \$587,126.00, inclusive of interest.

Respondent is found liable for breach of contract and shall pay to Claimant Albert Alexander Montague compensatory damages in the amount of \$580,220.00, inclusive of interest.

Claimants' request for attorneys' fees is denied.

Any and all relief not specifically addressed herein, including Claimants' request for punitive damages, is 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

\*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 is assessed the following:

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

**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  
one (1) arbitrator @ \$200.00 = \$200.00

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Total Contested Motion for Issuance of Subpoena Fees = \$200.00

The Panel has assessed \$100.00 of the contested motion for issuance of a subpoena fee to Claimants, jointly and severally.

The Panel has assessed \$100.00 of the contested motion for issuance of a subpoena 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:

Four (4) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 1,800.00  
Pre-hearing conferences: February 26, 2010 1 session  
May 11, 2010 1 session  
September 16, 2010 1 session  
September 29, 2010 1 session

Three (3) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 3,600.00  
Pre-hearing conferences: September 14, 2009 1 session  
April 13, 2010 1 session  
April 19, 2010 1 session

Eight (8) Hearing sessions @ \$1,200.00/session = \$9,600.00



|                |                 |             |
|----------------|-----------------|-------------|
| Hearing Dates: | October 4, 2010 | :: sessions |
|                | October 5, 2010 | :: sessions |
|                | October 6, 2010 | :: sessions |
|                | October 7, 2010 | :: sessions |

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Total Hearing Session Fees =\$15,000.00

The Panel has assessed \$7,500.00 of the hearing session fees to Claimants, jointly and severally.

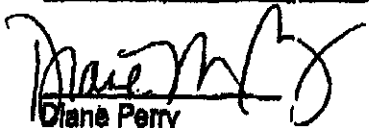
The Panel has assessed \$7,500.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

|             |   |  |
|-------------|---|--|
| Diane Perry | - | Public Arbitrator, Presiding Chairperson |
| Lalla Folk  | - | Public Arbitrator                        |
| Robert Kane | - | Non-Public Arbitrator                    |

**Concurring Arbitrators' Signatures**

  
Diane Perry  
Public Arbitrator, Presiding Chairperson

10/12/10  
Signature Date

\_\_\_\_\_  
Lalla Folk  
Public Arbitrator

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

\_\_\_\_\_  
Robert Kane  
Non-Public Arbitrator

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

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Date of Service (For FINRA Dispute Resolution use only)

|                |                 |            |
|----------------|-----------------|------------|
| Hearing Dates: | October 4, 2010 | 2 sessions |
|                | October 5, 2010 | 2 sessions |
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| Laila Folk  | - | Public Arbitrator                        |
| Robert Kane | - | Non-Public Arbitrator                    |

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\_\_\_\_\_  
Diane Perry  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Laila Folk  
Public Arbitrator

Oct. 12, 2010  
Signature Date

\_\_\_\_\_  
Robert Kane  
Non-Public Arbitrator

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

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Public Arbitrator, Presiding Chairperson

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Laila Folk  
Public Arbitrator

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Robert Kane  
Non-Public Arbitrator

  
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