

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Louis Maryland, Louis Maryland Sec. 142 Trust, and
Louis Maryland Trust Estate

Case Number: 18-02661

vs.

Respondents

Merrill Lynch, Pierce, Fenner & Smith Incorporated,
Merrill Lynch Professional Clearing Corp., Transamerica
Capital, Inc., Transamerica Financial Advisors, Merrill
Lynch Government Securities Inc., Merrill Lynch Realty
Securities Corporation, Merrill Lynch Financial Services
of Puerto Rico, Inc., Sanford C. Bernstein & Co., LLC,
Fam Distributors, Inc., Protected Investors of America,
Matthew Louis Santangelo, Lisa Ann Levine, James J.
Okamura, Julia Klammer, Richard Francis Gornto,
Janelle A. Walker, Gregory C. Franks, Joseph J.
Palmucci, Marla Moskowitz-Hesse, Cheryl Manley, Amy
Ferrero, Richard J. Williams, Julia M. Duran, Cheryl Y.
Sullivan, Catherine Planet, Timothy Paul O'Grady, Peter
W. Rosenthal, James Coyle, Robin Browning, Mary M.
Polfer, Francis Quinn, Jr., Transamerica Advisors Life
Insurance f/k/a Merrill Lynch Life Insurance Company,
Family Life Insurance Company a/k/a Manhattan Life
Insurance Company, Hania Karpinski, Waafa Morgan,
and Francis S. Quinn, Jr.

Hearing Site: Houston, Texas

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customers vs. Members, Associated Persons, and Non-Members

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimants Louis Maryland (“Maryland”), Louis Maryland Sec. 142 Trust, and Louis Maryland Trust Estate (collectively, “Claimants”): Craig K. Hemphill, CKH Legal, Houston, Texas.*

For Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPFS”), Merrill Lynch Professional Clearing Corp. (“MLPCC”), Matthew Louis Santangelo (“Santangelo”), Lisa Ann

Levine (“Levine”), James J. Okamura (“Okamura”), Julia Klammer (“Klammer”), Richard Francis Gornto (“Gornto”), Janelle A. Walker (“Walker”), Gregory C. Franks (“Franks”), Joseph J. Palmucci (“Palmucci”), Marla Moskowitz-Hesse (“Mosckowitz-Hesse”), Cheryl Manley (Manley), Amy Ferrero (“Ferrero”), Richard J. Williams (“Williams”), Julia M. Duran (“Duran”), Cheryl Y. Sullivan (“Sullivan”), Catherine Planet (“Planet”), James Coyle (“Coyle”), Robin Browning (“Browning”), Mary M. Polfer (“Polfer”), and Francis Quinn, Jr. (“Quinn”): Tara A. LaClair, Esq. and Evan Way, Esq., Crowe & Dunlevy P.C., Dallas, Texas.

For Respondents Transamerica Capital, Inc. (“TCI”) and Transamerica Financial Advisors, Inc. (“TFA”): Katherine C. Donlon, Esq., Guerra King, Tampa, Florida.

Respondent Timothy Paul O’Grady (“O’Grady”) appeared pro se.

Respondents Merrill Lynch Government Securities Inc. (“MLGSI”), Merrill Lynch Realty Securities Corporate (“MLRSC”), Merrill Lynch Financial Services of Puerto Rico (“MLFSPR”), Sanford C. Bernstein & Co., LLC (“SCB”), Fam Distributors, Inc. (“FDI”), Protected Investors of America (“Protected Investors”), Peter W. Rosenthal (“Rosenthal”), Transamerica Advisors Life Insurance (“TALI”), Family Life Insurance Company (“FLIC”), Hania Karpinski (“Karpinski”), Waafa Morgan (“Morgan”), and Francis S. Quinn, Jr. did not enter appearances in this matter.

*FINRA recorded the appearance of Claimants’ counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimants may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimants’ counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: July 26, 2018.

First Amendment to Statement of Claim filed on or about: October 29, 2018.

Second Amended Statement of Claim filed on or about: November 8, 2018.

Third Amended Statement of Claim filed on or about: January 6, 2019.

Fourth Amended Statement of Claim filed on or about: January 10, 2019.

Fifth Amended Statement of Claim filed on or about: March 2, 2019.

Sixth Amended Statement of Claim filed on or about March 8, 2019.

Seventh Amended Statement of Claim filed on or about April 24, 2019.

Eighth Amended Statement of Claim filed on or about: May 23, 2019.

Corrected Eighth Amended Statement of Claim filed on or about: May 30, 2019.

Ninth Amended Statement of Claim filed on or about: July 2, 2019.

Tenth Amended Statement of Claim filed on or about: July 29, 2019.

Amendment to Tenth Amended Statement of Claim filed on or about: July 30, 2019.

Eleventh Amended Statement of Claim filed on or about: August 8, 2019.

Claimants signed the Submission Agreement: July 25, 2018, October 29, 2018, and November 8, 2018.

Statement of Answer filed by MLPFS, MLPCC, Okamura, Klammer, Levine, and Santangelo on or about: September 18, 2018.

Amended Statement of Answer filed by MLPFS, Okamura, Klammer, Levine, Santangelo, and Gornto on or about: December 21, 2018.

Statement of Answer filed by TCI and TFA on or about: September 20, 2019.

Statement of Answer filed by Walker and Franks on or about: February 26, 2019.
Statement of Answer filed by Palmucci on or about: March 5, 2019.
Statement of Answer filed by Coyle on or about: April 23, 2019.
Statement of Answer filed by Moskowitz-Hesse on or about: April 23, 2019.
Statement of Answer filed Manley on or about: June 13, 2019.
Statement of Answer filed by Browning on or about: June 13, 2019.
Statement of Answer filed by Polfer on or about: June 13, 2019.
Statement of Answer filed by Ferrero on or about: July 2, 2019.
Statement of Answer filed by Williams on or about: July 30, 2019.
Statement of Answer filed by Duran on or about: July 30, 2019.
Statement of Answer filed by Sullivan on or about: July 30, 2019.
Statement of Answer filed by Quinn on or about: September 12, 2019.
Statement of Answer filed by Planet on or about: September 12, 2019.
Statement of Answer to Amendment to Tenth Amended Statement of Claim and Motion to Strike and/or Motion to Show Cause filed by MLPFS, Santangelo, Levine, Okamura, Klammer, Gornto, Franks, Walker, Palmucci, Moskowitz-Hesse, Coyle, Manley, Browning, Polfer, Ferrero, Williams, Duran, Sullivan, Quinn, and Planet on or about: August 19, 2019.
MLPFS signed the Submission Agreement: August 21, 2018.
MLPCC signed the Submission Agreement: October 23, 2018.
Okamura signed the Submission Agreement: September 13, 2018.
Klammer signed the Submission Agreement: September 17, 2018.
Levine signed the Submission Agreement: September 11, 2018.
Santangelo signed the Submission Agreement: September 10, 2018.
Gornto signed the Submission Agreement: November 24, 2018.
TCI signed the Submission Agreement: September 5, 2019.
TFA signed the Submission Agreement: September 4, 2019.
Walker signed the Submission Agreement: February 22, 2019.
Franks signed the Submission Agreement: February 27, 2019.
Palmucci signed the Submission Agreement: March 24, 2019.
Coyle signed the Submission Agreement: March 14, 2019.
Moskowitz-Hesse signed the Submission Agreement: March 19, 2019.
Manley signed the Submission Agreement: May 16, 2019.
Robin Browning signed the Submission Agreement: May 8, 2019.
Polfer signed the Submission Agreement: July 26, 2019.
Ferrero signed the Submission Agreement: June 21, 2019.
Williams signed the Submission Agreement: July 15, 2019.
Duran signed the Submission Agreement: July 15, 2019.
Sullivan signed the Submission Agreement: July 17, 2019.
Quinn signed the Submission Agreement: August 2, 2019.
Planet signed the Submission Agreement: August 9, 2019.

Statement of Answer (in the form of an Affidavit) filed by O'Grady on or about: August 13, 2018.
O'Grady did not sign the Submission Agreement.

MLGSI, MLRSC, MLFSPR, SCB, FDI, Protected Investors, Rosenthal, TALI, FLIC, Karpinski, Morgan, and Francis S. Quinn, Jr. did not file Statements of Answer or sign Submission Agreements.

CASE SUMMARY

In the Statement of Claim, as amended, Claimants asserted that an irrevocable court-created trust, for the benefit of an incapacitated minor, was not administered in accordance with its terms and, as a result, losses and a substantial tax bill were incurred.

Unless specifically admitted in the Statement of Answer, as amended, MLPFS, MLPCC, Okamura, Klammer, Levine, Santangelo, and Gornto denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Statements of Answer, Franks and Walker, Palmucci, Coyle, Moskowitz-Hesse, Manley, Browning, Polfer, Ferrero, Williams, Duran, Sullivan, Quinn, and Planet incorporated by reference the Amended Statement of Answer filed by MLPFS, Okamura, Klammer, Levine, Santangelo, and Gornto.

Unless specifically admitted in the Statement of Answer, TCI and TFA denied the allegations made in the Statement of Claim.

In the Statement of Answer, O'Grady denied any knowledge of Claimants and denied that Claimants intended to name him as a party.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimants requested compensatory damages, including full restitution, refund of all interest paid to the trustee from the date of the wrongful and illegal act(s) to current day and accumulated daily from the date of error/violation, and, alternatively, repayment of all monies until Claimants are paid in full; punitive damages; treble damages; attorneys' fees; costs; pre- and post-judgment interest at the highest rate allowable by law and accumulated daily from the date of error/violation; denial of any expungement request; termination of FINRA membership; and any such other and further relief, general or special, at law or in equity to which Claimants may be justly entitled.

In the Statement of Answer, as amended, MLPFS, MLPCC, Okamura, Klammer, Levine, Santangelo, and Gornto requested that Claimants' claims be dismissed in their entirety, that MLPFS be awarded its attorneys' fees and costs, and that this matter be expunged from the registration records maintained by the Central Registration Depository ("CRD") for each individual respondent.

In the Statements of Answer, Franks and Walker, Palmucci, Coyle, Moskowitz-Hesse, Manley, Browning, Polfer, Ferrero, Williams, Duran, Sullivan, Quinn, and Planet incorporated by reference the relief requested in the Amended Statement of Answer filed by MLPFS, Okamura, Klammer, Levine, Santangelo, and Gornto.

In the Statement of Answer, TCI and TFA requested dismissal of Claimants' claims.

In the Statement of Answer, O'Grady requested removal from this matter.

OTHER ISSUES CONSIDERED AND DECIDED

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

O'Grady did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

MLGSI, MLRSC, MLFSPR, SCB, FDI, and Protected Investors did not file properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code.

TALI, FLIC, Karpinski, Morgan, and Francis S. Quinn, Jr. are not members or associated persons of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to Claimants' claims against TALI, FLIC, Karpinski, Morgan, and Francis S. Quinn, Jr.

On August 15, 2018, Claimants filed Requests to Remove Rosenthal and O'Grady. Therefore, the Panel made no determination with respect to any of Claimants' relief requests as to Rosenthal or O'Grady.

On September 10, 2018, Claimants filed Requests to Remove Protected Investors and SCB. Therefore, the Panel made no determination with respect to any of Claimants' relief requests as to Protected Investors and SCB.

On January 6, 2019, Claimants filed a Request to Remove FDI. Therefore, the Panel made no determination with respect to any of Claimants' relief requests as to FDI.

On May 23, 2019, Claimants filed notice of the withdrawal of claims against Francis S. Quinn, Jr.

On June 6, 2019, Claimants filed a Request to Remove Morgan. Therefore, the Panel made no determination with respect to any of Claimants' relief requests as to Morgan.

On August 10, 2019, Claimants filed a Request to Remove Karpinski.

On August 19, 2019, MLPFS, Santangelo, Levine, Okamura, Klammer, Gornto, Franks, Walker, Palmucci, Moskowitz-Hesse, Coyle, Manley, Browning, Polfer, Ferrero, Williams, Duran, Sullivan, Quinn, and Planet filed a Statement of Answer to Amendment to Tenth Amended Statement of Claim and Motion to Strike and/or Motion to Show Cause ("Motion to Strike"). On August 29, 2019, Claimants filed a Response to the Motion to Strike.

On September 12, 2019, Claimants filed a Request to Remove Planet. Therefore, the Panel made no determination with respect to any of Claimants' relief requests as to Planet. On September 23, 2019, MLPFS, Santangelo, Levine, Okamura, Klammer, Gornto, Franks, Walker, Palmucci, Moskowitz-Hesse, Coyle, Manley, Browning, Polfer, Ferrero, Williams, Duran, Sullivan, Quinn, and Planet filed a Motion in Support of the Request to Remove Planet, which requested expungement of all references to this matter specifically from Planet's CRD

registration records. On September 25, 2019, Claimants filed a Reply to the Motion in Support of the Request to Remove Planet, supporting the expungement request.

On September 22, 2019, Claimants filed a Request to Remove TCI and TFA. Therefore, the Panel made no determination with respect to any of Claimants' relief requests as to TCI and TFA.

On September 29, 2019, MLPFS filed a Motion to Require Claimants to Show Cause ("Motion to Show Cause"). On October 4, 2019, Claimants filed a Response to the Motion to Show Cause. On October 9, 2019, MLPFS, Santangelo, Levine, Okamura, Klammer, Gornto, Franks, Walker, Palmucci, Moskowitz-Hesse, Coyle, Manley, Browning, Polfer, Ferrero, Williams, Duran, Sullivan, and Quinn filed a Reply in Support of the Motion to Show Cause.

On October 13, 2019, Claimants filed a Motion for Sanctions. On October 23, 2019, MLPFS, Santangelo, Levine, Okamura, Klammer, Gornto, Franks, Walker, Palmucci, Moskowitz-Hesse, Coyle, Manley, Browning, Polfer, Ferrero, Williams, Duran, Sullivan, and Quinn filed a Response to the Motion for Sanctions. On October 29, 2019, Claimants filed a Reply to the Response to the Motion for Sanctions.

On January 14, 2020, Claimants filed a Motion to Dismiss for Lack of Jurisdiction ("Motion to Dismiss"), pursuant to Rule 12202 of the Code and, in the alternative, Rules 12409 and 12702(b), requesting dismissal without prejudice of Claimants' claims. On January 24, 2020, MLPFS, Santangelo, Levine, Okamura, Klammer, Gornto, Franks, Palmucci, Moskowitz-Hesse, Coyle, Manley, Browning, Polfer, and Quinn filed a Response to the Motion to Dismiss. On January 29, 2020, Claimants filed a Reply to the Response to the Motion to Dismiss. On January 31, 2020, MLPFS, Santangelo, Levine, Okamura, Klammer, Gornto, Franks, Palmucci, Moskowitz-Hesse, Coyle, Manley, Browning, Polfer, and Quinn filed a Sur-Reply to the Motion to Dismiss. On February 6, 2020, Claimants filed a Reply to the Sur-Reply to the Motion to Dismiss. The same day, Claimants withdrew the Motion to Dismiss.

On January 15, 2020, Claimants filed a Partial Withdrawal of Claims Under Rule 12702(b) of the Code ("Partial Withdrawal") to withdraw without prejudice the claims against Walker, Ferrero, Williams, Duran, Sullivan, MLGSI, MLFSPR, and FLIC. On January 27, 2020, MLPFS, Santangelo, Levine, Okamura, Klammer, Gornto, Franks, Walker, Palmucci, Moskowitz-Hesse, Coyle, Manley, Browning, Polfer, Ferrero, Williams, Duran, Sullivan, and Quinn filed a Response to the Partial Withdrawal, indicating the Partial Withdrawal was unopposed. Therefore, the Panel made no determination with respect to any of Claimants' relief requests as to Walker, Ferrero, Williams, Duran, Sullivan, MLGSI, and MLFSPR.

On January 15, 2020, the Panel heard oral arguments on the Motion to Strike, Motion to Show Cause, Motion for Sanctions, and other matters. In an Order dated the same day, the Panel held the Motion to Strike and Motion for Sanctions in abeyance, pending Claimants' filing of an amended claim.

On February 11, 2020, Claimants filed a Twelfth Amended Statement of Claim, pursuant to the Panel's January 15, 2020 Order. On March 5, 2020, the Panel heard oral arguments on the Twelfth Amended Statement of Claim and other matters. In an Order dated March 10, 2020, the Panel directed Claimants to continue their efforts to resolve the deficiencies related to the filing. On April 7, 2020, Claimants filed an agreed request to stay or abate the proceedings.

On October 15, 2020, Claimants filed an agreed request to dismiss Claimants' claims with prejudice. Therefore, the Panel made no determination with respect to any of Claimants' relief requests.

On October 30, 2020, Klammer filed a Motion for Expungement, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on January 22, 2021, so the parties could present oral argument and evidence on Klammer's request for expungement.

Claimants participated in the expungement hearing with counsel and did not oppose the request for expungement.

The Panel reviewed the BrokerCheck® Report for Klammer. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Klammer did not contribute to the settlement amount and was not involved in the settlement. The Panel determined that the settlement was irrelevant, due to Klammer's lack of involvement in the management or administration of the underlying investments.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Motion for Expungement, including the exhibits; settlement documentation; and Klammer's testimony.

Santangelo, Levine, Okamura, Gornto, Franks, Walker, Palmucci, Moskowitz-Hesse, Coyle, Manley, Browning, Polfer, Ferrero, Williams, Duran, Sullivan, Quinn, and Planet did not pursue their expungement requests. Accordingly, the Panel made no determination on expungement of all references to this matter from their CRD registration records.

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 1984347) from registration records maintained by the CRD for Respondent Julia Klammer (CRD Number 1264701) with the understanding that, pursuant to Notice to Members 04-16, Respondent Julia Klammer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The Panel has made the above Rule 2080 findings based on the following reasons:

Based upon review of the underlying case documents, including the Motion for Expungement with its exhibits, as well as the testimony of Klammer at the hearing, the Panel concludes that Klammer was initially contacted for recommendations regarding investment options that would meet the trust's requirements and gain the approval of the court, which created the trust. After her recommendations were presented to the court, Klammer's involvement ended. Thereafter, she was not involved in oversight, management, or administration of the investments nor consulted regarding any decisions related thereto. Thus, the Panel finds that Klammer was not involved in any of the decisions or actions alleged in the underlying claim and the claim, allegation, or information is factually impossible or clearly erroneous.

2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services 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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as parties, MLPFS, MLPCC, TCI, TFA, MLGSI, MLRSC, MLFSPR, SCB, FDI, and Protected Investors are each assessed the following:

Member Surcharge = \$ 1,900.00

In addition, MLPFS, MLPCC, TCI, TFA, MLGSI, MLRSC, and MLFSPR are each assessed the following:

Member Process Fee = \$ 3,750.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

September 28-October 2, 2020 and October 5-9, 2020, Waived
postponement requested by the parties

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:

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	3,375.00
Pre-Hearing Conferences: October 14, 2019	1 session	
January 15, 2020	1 session	
March 5, 2020	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: January 22, 2021	1 session	
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Total Hearing Session Fees	= \$	4,500.00

The Panel has assessed \$1,687.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to MLPFS, MLPCC, Santangelo, Levine, Okamura, Klammer, Gornto, Franks, Walker, Palmucci, Moskowitz-Hesse, Coyle, Manley, Browning, Polfer, Ferrero, Williams, Duran, Sullivan, Quinn, MLGSI, MLRSC, and MLFSPR.

The Panel has assessed \$1,125.00 of the hearing session fees jointly and severally to MLPFS, MLPCC, Santangelo, Levine, Okamura, Klammer, Gornto, Franks, Palmucci, Moskowitz-Hesse, Coyle, Manley, Browning, Polfer, Quinn, and MLRSC.

The Panel has assessed \$1,125.00 of the hearing session fees to Klammer.

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

ARBITRATION PANEL

Daniel J. Pagnano	-	Public Arbitrator, Presiding Chairperson
Tracie Jackson	-	Public Arbitrator
William Walter Cathriner, II	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Daniel J. Pagnano

Daniel J. Pagnano
Public Arbitrator, Presiding Chairperson

02/10/2021

Signature Date

Tracie Jackson

Tracie Jackson
Public Arbitrator

02/10/2021

Signature Date

William Walter Cathriner, II

William Walter Cathriner, II
Non-Public Arbitrator

02/11/2021

Signature Date

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

February 12, 2021

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