

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

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In the Matter of the Arbitration Between:

Claimants

Amalia Colon De Santana  
Carlos R. Santana Lugo

Case Number: 19-02891

vs.

Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

Hearing Site: San Juan, Puerto Rico

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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. Member

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Amalia Colon De Santana and Carlos R. Santana Lugo: William B. Young, Jr., Esq., Colling, Gilbert, Wright & Carter, LLC, Orlando, Florida.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“MLPFS”): Logan S. Fisher, Esq., Bressler, Amery & Ross PC, Florham Park, New Jersey; and Oreste R. Ramos, Esq., Pietrantoni Méndez & Alvarez LLC, San Juan, Puerto Rico.

\*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: September 26, 2019.

Amalia Colon De Santana signed the Submission Agreement: May 24, 2019.

Carlos R. Santana Lugo signed the Submission Agreement: May 24, 2019.

Statement of Answer filed by Respondent on or about: February 10, 2020.

Merrill Lynch Pierce Fenner & Smith Inc. signed the Submission Agreement: February 11, 2020.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; violation of NASD and NYSE rules; breach of contract; negligence; fraud; violation of Section 12(A)(2) of the Securities Act of 1933; false inducement to inaction; failure to supervise; violation of Article 1802 of the Civil Code of Puerto Rico 31 Laws of Puerto Rico Annotated (“L.P.R.A.”), including 31 L.P.R.A. §5141, 31 L.P.R.A. §3020, L.P.R.A. 31 §3021, et seq. The causes of action relate to Claimants’ investments in Puerto Rico municipal debt instruments.

Unless specifically admitted in the Statement of 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: damages according to proof, but not less than \$72,000.00; interest on Claimants’ losses or any award made herein, at the highest applicable rate; costs, legal fees, and expenses; punitive damages; and for such other and additional damages and relief (whether disgorgement of profits, unjust enrichment, rescission, restitution, non-monetary, declaratory judgment, equitable or otherwise) as deemed just and equitable by the Arbitrator.

In the Statement of Answer, Respondent requested: that Claimants’ claim be denied with prejudice in its entirety; expungement of this claim from the Central Registration Depository (“CRD”) registration records of unnamed party Juan Carlos Estarellas; and for such other and further relief deemed just and proper by the Arbitrator.

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

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On August 23, 2021, Claimants filed a notice of settlement. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim.

On October 22, 2021, Respondent filed a Petition for an Order of Expungement on behalf of unnamed party Juan Carlos Estarellas (CRD Number 3248002).

On October 26, 2021, Claimants notified FINRA that they would not participate in the expungement proceeding nor take a position as to unnamed party Juan Carlos Estarellas’s request for expungement.

The Arbitrator conducted a recorded hearing by videoconference on December 1, 2021, so the parties could present oral argument and evidence on unnamed party Juan Carlos Estarellas’s request for expungement.

Claimants did not participate in the expungement hearing and did not take a position as to unnamed party Juan Carlos Estarellas’s request for expungement.

The Arbitrator reviewed unnamed party Juan Carlos Estarellas's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement amount was a small fraction of the relief requested in Claimants' Statement of Claim and was made as a business decision reached by Respondent. Furthermore, the Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that unnamed party Juan Carlos Estarellas did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim for FINRA Arbitration Number 19-02891; Petition for an Order of Expungement on behalf of unnamed party Juan Carlos Estarellas; and direct testimony from unnamed party Juan Carlos Estarellas.

### **AWARD**

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

The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2050117) from registration records maintained by the CRD for unnamed party Juan Carlos Estarellas (CRD Number 3248002) with the understanding that, pursuant to Notice to Members 04-16, unnamed party Juan Carlos Estarellas 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 of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The claim, allegation, or information is false.

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

Claimants claimed that the financial advisor, Juan Carlos Estarellas, violated FINRA rules by (a) "The Financial Advisor recommended the improper investment strategies, and caused the Claimants to invest and hold positions in a concentrated portfolio of Puerto Rico municipal securities" (FINRA Dispute Resolution Arbitration Number 19-02891, p.

2 of the Statement of Claim). This is the only direct complaint concerning the financial advisor's conduct or portfolio management. All other accusations were directed toward Respondent.

Mr. Estarellas directly testified that during 2010 and again in 2012 he explicitly warned Claimants not to invest in Puerto Rico investment securities because they were too narrow of an investment, and several investment professionals had predicted that losses were expected. Mr. Estarellas's testimony also included that Claimants were relying on information from relatives who were not licensed advisors on where to invest their money. It was only after Claimants insisted on purchasing Puerto Investment Securities that Mr. Estarellas placed them into funds that were less likely to incur significant losses. The original Statement of Claim showed that Claimants' evidence was incomplete and did not reflect the true nature of their relationship with Mr. Estarellas (Ibid., pp. 1-14).

There was no evidence presented to contradict Mr. Estarellas's testimony. The Arbitrator determined that the testimony was truthful and clearly spelled out the multiple warnings provided to Claimants against pursuing these investments. Mr. Estarellas also identified alternative investments more suitable for Claimants, but his suggestions were repeatedly denied. No further documentation or testimony was presented that added to the lacking original demand. The Arbitrator believes that Mr. Estarellas has met his burden of proof that expungement is appropriate in this matter pursuant to FINRA Rule 2080(b)(1) because (A) the claim, allegation or information is factually impossible or clearly erroneous and (C) the claim, allegation or information is false.

### **FEES**

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

#### **Filing Fees**

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

Initial Claim Filing Fee = \$ 975.00

*\*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 MLPFS is assessed the following:

Member Surcharge = \$ 1,100.00

Member Process Fee = \$ 2,250.00

#### **Late Pre-Hearing Cancellation Fees**

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

February 20, 2020, cancellation requested by the parties = \$ 100.00

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Total Late Pre-Hearing Cancellation Fees = \$ 100.00

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees jointly and severally to Claimants.

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees to Respondent.

**Hearing Session Fees and Assessments**

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which 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: March 16, 2020 1 session

One (1) hearing session on expungement request @ \$450.00/session = \$ 450.00  
Hearing: December 1, 2021 1 session

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Total Hearing Session Fees = \$ 900.00

The Arbitrator has assessed \$225.00 of the hearing session fees jointly and severally to Claimants.

The Arbitrator has assessed \$675.00 of the hearing session fees to Respondent.

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

**ARBITRATOR**

Harold Craig Cohen

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Sole 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.

**Arbitrator's Signature**

***Harold Craig Cohen***

Harold Craig Cohen  
Sole Public Arbitrator

**12/08/2021**

Signature Date

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December 08, 2021

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