

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

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In the Matter of the Arbitration Between:

Claimants

Daniel Massry  
Isaac Massry  
Linda Massry  
Mark Massry  
Iris Massry  
Marilyn Massry  
Rochelle Massry  
Danmas, LLC

Case Number: 21-00313

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Jersey City, New Jersey

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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

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Daniel Massry, Isaac Massry, Linda Massry, Mark Massry, Iris Massry, Marilyn Massry, Rochelle Massry, and Danmas, LLC: Michael S. Hill, Esq., Menzer & Hill, P.A., Boca Raton, Florida\*.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: Regina Pepe Martorana, Esq. and Kathryn B. Rockwood, Esq., Bressler, Amery & Ross, PC, New York, New York.

\*FINRA recorded the appearance of Claimants' counsel at the time of filing of the Statement of Claim. Counsel's representation of Claimant 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: February 4, 2021.  
Daniel Massry signed the Submission Agreement: February 4, 2021.  
Iris Massry signed the Submission Agreement: February 4, 2021.  
Marilyn Massry signed the Submission Agreement: February 4, 2021.  
Rochelle Massry signed the Submission Agreement: February 4, 2021.  
Mark Massry signed the Submission Agreement: February 4, 2021.  
Isaac Massry signed the Submission Agreement: February 4, 2021.  
Linda Massry signed the Submission Agreement: February 4, 2021.  
Danmas, LLC signed the Submission Agreement: February 4, 2021.

Merrill Lynch, Pierce, Fenner & Smith Inc. did not file a Statement of Answer or sign the Submission Agreement.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: breach of contract and warranties, promissory estoppel; violation of state securities statutes; breach of fiduciary duty; negligence and gross negligence; misrepresentation/omission and negligent misrepresentation/omission; unjust enrichment; failure to supervise; common law and statutory claims; and vicarious and control person liability. The causes of action relate to investments in the Paulson Recovery Fund, the AC Power and Energy Fund VI, and other unspecified bonds.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested compensatory damages between \$100,000.00 and \$500,000.00; statutory damages pursuant to state laws; recessionary damages; lost opportunity damages; accrued statutory interest; costs, filing and hearing fees; and other remedies the Panel deems proper and appropriate.

Respondent filed a request for expungement on behalf of Unnamed Party Richard G. Cardinali of all references to this matter from Central Registration Depository ("CRD") registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

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

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

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") is bound by the determination of the Panel on all issues submitted.

On July 1, 2021, Claimants filed a notice of settlement and that Respondent requested that the case remain open for expungement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On September 9, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Party Richard G. Cardinali, to which no response was filed.

The Panel conducted a recorded hearing by videoconference on November 18, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Unnamed Party Richard G. Cardinali.

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

The Panel reviewed Unnamed Party Richard G. Cardinali's BrokerCheck® Report. 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, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Unnamed Party Richard G. Cardinali did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings; Unnamed Party Richard G. Cardinali's testimony; Unnamed Party Richard G. Cardinali's BrokerCheck® Report; settlement agreement; and other exhibits.

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

### **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:

1. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2112535) from registration records maintained by the CRD for Unnamed Party Richard G. Cardinali (CRD Number 2648089) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Richard G. Cardinali 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 Panel has made the following Rule 2080 affirmative findings of fact:

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

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

Claimant Daniel Massry was a sophisticated high net worth accredited individual whose account consisted mainly of bonds with a few equities and alternative investments. In 2021, he filed a FINRA arbitration alleging suitability and misrepresentation on bond purchase mark-ups.

The testimony and evidence do not support his claims. Bond mark-ups are not readily available to investment professionals. Nevertheless, in their monthly meetings to discuss portfolio positions and purchases, Richard G. Cardinali (“Cardinali”) prepared documents clearly showing bond mark-ups. Additionally, the small investments in alternatives – all of which save one were profitable – were suitable given his sophistication and investment objectives.

The firm settled the matter to avoid the cost of defense. Cardinali was not involved in the settlement and did not contribute.

As a result, this Occurrence should be expunged on the grounds it is clearly erroneous, false or both. Cardinali also testified as to the negative impact this disclosure has had on his business development efforts.

### **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	= \$ 1,425.00
Expungement 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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. is assessed the following:

Member Surcharge	= \$ 1,900.00
Member Process Fee	= \$ 3,750.00

#### **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 Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) hearing session on expungement request @ \$1,125.00/session	= \$ 1,125.00
Hearing: November 18, 2021 1 session	

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Total Hearing Session Fees	= \$ 1,125.00
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The Panel has assessed the total expungement hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Robert E. Anderson	-	Public Arbitrator, Presiding Chairperson
Sam Antar	-	Public Arbitrator
Martin R. Cramer	-	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**

***Robert E. Anderson***

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Robert E. Anderson  
Public Arbitrator, Presiding Chairperson

**12/01/2021**

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Signature Date

***Sam Antar***

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Sam Antar  
Public Arbitrator

**12/01/2021**

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

***Martin R. Cramer***

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Martin R. Cramer  
Public Arbitrator

**12/01/2021**

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Signature Date

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December 02, 2021

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