

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Phillip J. Buchanan Living Trust, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and  
Daniel Francis Friel, Jr., Respondents

Case Number: 00-03568

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

For Claimant:

George S. Trevor, Esq.  
Law Office of George S. Trevor  
Corte Madera, California

For Respondents:

Eric J. Glassman, Esq.  
Mennemeier, Glassman & Stroud  
Sacramento, California

**CASE INFORMATION**

Statement of Claim filed: August 16, 2002

Claimant's Uniform Submission Agreement signed: August 25, 2000

Joint Statement of Answer filed by Respondents: October 23, 2000

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement  
signed: October 16, 2000

Respondent Daniel Francis Friel, Jr.'s Uniform Submission Agreement signed:  
September 19, 2000

**CASE SUMMARY**

Claimant alleged negligence, breach of contract, rescission, and breach of fiduciary duty  
involving shares of LOOK common stock.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of  
Claim.

### **RELIEF REQUESTED**

Claimant requested the following:

1. Sales made by the Claimant in LOOK common stock from March 7, 2002 to March 20, 2002 be honored and the net proceeds received from these sales be returned to the Claimant's account with Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.
2. The purchases of shares of LOOK common stock made on behalf of Claimant's account on March 28, 2002 and March 29, 2002 be rescinded.
3. Interest on \$2,027,112.18 from March 28, 2002 through the date of the Arbitration Award.
4. Costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, reimbursement of arbitration costs and expungement.

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

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable to and shall pay Claimant the sum of \$135,444.10 in compensatory damages inclusive of interest through April 10, 2002.
2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable to and shall pay Claimant interest in the amount of \$31.40 per day from April 11, 2002 until payment of this Award is made in full.
3. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable to and shall pay Claimant \$500.00 for reimbursement of Arbitration Filing Fees.
4. All claims by Claimant against Respondent Daniel Francis Friel, Jr. are denied.
5. The parties shall bear their respective costs, including attorney's fees.
6. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 500.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 4,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 7,600.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

Hearing Dates, August 21 through 24, 2001, adjournment requested by All Parties (fee waived by Panel)	= \$ 0.00
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#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

Three (3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 3,600.00
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Pre-hearing conferences:	April 5, 2001	1 session
	July 12, 2001	1 session
	December 19, 2001	1 session

Four (4) Hearing sessions @ \$1,200.00/session	= \$ 4,800.00
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Hearing(s):	April 8, 2002	2 sessions
	April 9, 2002	2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 8,400.00</b>
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The Panel assessed \$8,400.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

**Fee Summary**

1. Claimant Phillip J. Buchanan Living Trust is charged with the following fees and costs:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$(1,700.00)
<b>Refund Due to Claimant</b>	<b>= \$(1,200.00)</b>

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is charged with the following fees and costs:

<u>Member Fees</u>	= \$ 8,400.00
<u>Forum Fees</u>	= \$ 7,600.00
<u>Total Fees</u>	= \$16,000.00
<u>Less payments</u>	= \$( 8,600.00)
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 7,400.00</b>

All balances are payable to NASD Dispute Resolution, Inc. and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

*Matthew V. Brady, Esq.*

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*Public Arbitrator, Presiding Chair*

*James H. Schilt*

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*Public Arbitrator*

*Rudy E. Thorwirth*

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*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

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Matthew V. Brady, Esq.  
Chair, Public Arbitrator

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Signature Date

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James H. Schilt  
Public Arbitrator

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Signature Date

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Rudy E. Thorwirth  
Non-Public Arbitrator

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Signature Date

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Date of Service

ARBITRATION PANEL

*Matthew V. Brady, Esq.*

*James H. Schilt*

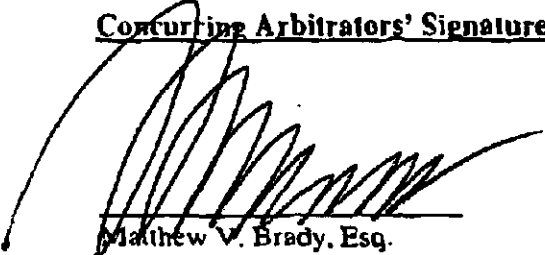
*Rudy E. Thorwirth*

*Public Arbitrator, Presiding Chair*

*Public Arbitrator*

*Non-Public Arbitrator*

Concurring Arbitrators' Signatures

  
Matthew V. Brady, Esq.  
Chair, Public Arbitrator

5/31/02  
Signature Date

James H. Schilt  
Public Arbitrator

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Signature Date

Rudy E. Thorwirth  
Non-Public Arbitrator

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

6/4/02  
Date of Service

NASD Dispute Resolution, Inc.

Arbitration No. 00-03568

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ARBITRATION PANEL

Matthew V. Brady, Esq. -

Public Arbitrator, Presiding Chair

James H. Schilt -

Public Arbitrator

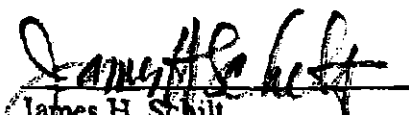
Rudy E. Thorwirth -

Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Matthew V. Brady, Esq.  
Chair, Public Arbitrator

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Signature Date

  
James H. Schilt  
Public Arbitrator

5/30/92  
Signature Date

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Rudy E. Thorwirth  
Non-Public Arbitrator

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Signature Date

6/4/02  
Date of Service

ARBITRATION PANEL

Matthew V. Brady, Esq.	-	Public Arbitrator, Presiding Chair
James H. Schilt	-	Public Arbitrator
Rudy E. Thorwirth	-	Non-Public Arbitrator

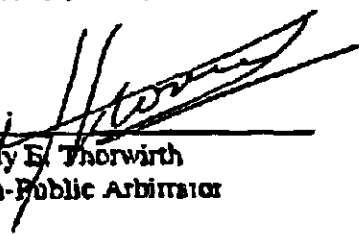
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Matthew V. Brady, Esq.  
Chair, Public Arbitrator

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Signature Date

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James H. Schilt  
Public Arbitrator

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

  
\_\_\_\_\_  
Rudy E. Thorwirth  
Non-Public Arbitrator

May 31 2002  
Signature Date

6/4/02  
Date of Service