

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

John P. Biscanin, Co-Administrator of the Estate of Dolores W. O'Keefe,  
Successor Conservator of Dolores W. O'Keefe,  
Successor Trustee of the Michael A. O'Keefe  
Sub-Trust of the Dolores W. O'Keefe Living Trust dated September 20, 1990, and  
Successor Trustee of the Michael A. O'Keefe  
Sub-Trust of the Dolores W. O'Keefe Irrevocable Trust dated July 12, 1996

and

00-05757  
Kansas City, Missouri

Name of Respondents

Merrill Lynch, Pierce Fenner & Smith, Inc.  
Merrill Lynch & Company, Inc.  
Merrill Lynch International Bank, Limited  
Thomas H. Freeman  
Richard J. Paradise  
Owen Bradley Stratton  
Chad G. Bushaw

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**REPRESENTATION OF PARTIES**

John P. Biscanin, Co-Administrator of the Estate of Dolores W. O'Keefe, Successor Conservator of Dolores W. O'Keefe, Successor Trustee of the Michael A. O'Keefe Sub-Trust of the Dolores W. O'Keefe Living Trust dated September 20, 1990, and Successor Trustee of the Michael A. O'Keefe Sub-Trust of the Dolores W. O'Keefe Irrevocable Trust dated July 12, 1996 ("**Claimant**") was represented by Kenneth J. Catanzarite, Esq. and Jim Travis Tice, Esq., Catanzarite Law Corporation, Anaheim, California.

Merrill Lynch, Pierce Fenner & Smith, Inc. ("**Respondent ML**"), Merrill Lynch & Company, Inc. and Merrill Lynch International Bank, Limited, Thomas H. Freeman ("**Respondent Freeman**"), Richard J. Paradise ("**Respondent Paradise**"), Owen Bradley Stratton ("**Respondent Stratton**") and Chad G. Bushaw ("**Respondent Bushaw**") (collectively as "**Respondents**") were represented by Allison M. Murdock, Esq., J. Margaret Tretbar, Esq., Daniel Bukovac, Esq., Sean W. Colligan, Esq., Mark Iba, Esq., and Marc McKay, Esq., Stinson Morrison Hecker LLP, Kansas City, Missouri. Also present on behalf of Respondents were Lori Martin, Esq., and Tom Mullaney, Esq., Merrill Lynch, Pierce Fenner & Smith, Inc., New York, New York.

### CASE INFORMATION

Statement of Claim was filed on or about December 29, 2000. Opposition to Respondents' Motion to Dismiss Arbitration was filed on or about August 21, 2001. Claimant's Notice of Related Ruling was filed on or about March 20, 2002. Letter dated March 23, 2001 in response to Respondents' March 22, 2001 letter. Letter dated April 4, 2001 in response to Respondents' March 27, 2001 letter. Claimant's Surreply in Response to Respondents' Reply in Support of Motion to Dismiss Arbitration was filed on or about September 25, 2001. Claimant's Motion to Amend Statement of Claim and First Amended Statement of Claim was filed at the hearing on May 3, 2002. Submission Agreement of Claimant John P. Biscanin, Co-Administrator of the Estate of Dolores W. O'Keefe, Successor Conservator of Dolores W. O'Keefe, Successor Trustee of the Michael A. O'Keefe Sub-Trust of the Dolores W. O'Keefe Living Trust dated September 20, 1990, and Successor Trustee of the Michael A. O'Keefe Sub-Trust of the Dolores W. O'Keefe Irrevocable Trust dated July 12, 1996 was signed on December 28, 2000 by Kenneth J. Catanzarite.

Letter dated March 22, 2001 advising that a Motion to Stay Arbitration and Join Parties had been filed in District Court of Johnson County, Kansas. Letter dated March 27, 2001 in response to Claimant's March 23, 2001 letter. Letter dated April 12, 2001 in response to Claimant's April 4, 2001 letter. Respondents' Answer to Claimant's Statement of Claim was filed on or about August 7, 2001. Respondents' Motion to Dismiss Arbitration was filed on or about August 7, 2001. Respondents' Reply to Claimant's Opposition to Motion to Dismiss Arbitration was filed on or about September 5, 2001. Respondents' Response to Claimant's Surreply in Response to Respondents' Reply in Support of Motion to Dismiss Arbitration was filed on or about October 25, 2001. Letter dated April 24, 2002 requesting the Panel to make specific findings of fact and conclusions of law. Submission Agreement of Thomas H. Freeman was signed on August 27, 2001. Submission Agreement of Richard J. Paradise was signed on August 24, 2001. Submission Agreement of Owen Bradley Stratton was signed on August 24, 2001. Submission Agreement of Chad G. Bushaw was signed on August 28, 2001.

### CASE SUMMARY

Claimant summarized the matter in Claimant's Arbitration Brief as follows:

In July 1996 Dolores O'Keefe ("Dolores"), a frail, elderly and incapacitated lady living in a nursing home in Overland Park, Kansas, owned more than 1.7 Million common shares of Albertson's Inc. (ABS) having a value of approximately \$68 million.<sup>1/</sup> Dolores, a widow, had three children: Michael A. O'Keefe ("Michael"), Anthony M. O'Keefe ("Anthony") and Patricia A. O'Keefe ("Patricia"). Michael, Anthony and Patricia each had children themselves (the "Grandchildren").

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<sup>1/</sup> Dolores had other assets of approximately \$2 Million, and in 1996 there was a margin loan of approximately \$5 Million. She therefore had a net estate of approximately \$65 Million.

Dolores created a comprehensive estate plan in September 1990: a nominally funded revocable living trust (the "1990 Trust" or the "Trust"), a pour-over will to the living trust and a durable power of attorney to her son, Anthony. Dolores became incapacitated very soon thereafter and her children moved her to an assisted living facility in Overland Park, Kansas, near Anthony. Anthony assumed management of Dolores' affairs via the power of attorney and as trustee. For the most part, he left the ABS shares in Dolores' Prudential Securities account. Over time, the ABS shares dramatically increased in value, from approximately \$25 Million in 1990 to approximately \$68 Million by 1996. Anthony and his siblings became concerned about estate tax consequences. Acting on that concern, in November 1995 Dolores' children placed her under a conservatorship in Johnson County, Kansas as a prelude to evaluating plans to minimize estate taxes. The children and Dolores' conservator considered a number of possibilities but came to no conclusion.

In early 1996, Michael approached Merrill Lynch to request its wealth protection expertise. Merrill Lynch indicates it undertook such planning on behalf of the entire O'Keefe family. Eventually Merrill Lynch proposed, and the children accepted, a plan to cause Dolores' conservator to give them 1,005,000 ABS shares. The gift would be in trust (335,000 shares each), under substantially the same provisions as the 1990 Trust. The plan also called for the conservator to transfer the remaining 748,000 ABS shares to the 1990 Trust as collateral for a loan to pay the gift tax on the 1,005,000 ABS shares the conservator would transfer to the children's trusts.

As authority to implement Merrill Lynch's plan, the conservator obtained an order from the Johnson County District Court. It permitted him to create a new irrevocable trust for Dolores (the "1996 Trust"), to make a gift of 1,005,000 ABS shares to the 1996 Trust (335,000 to a sub-trust for each of the children), and to transfer the remaining 748,000 ABS shares to the 1990 Trust. The gift amounted to approximately \$40 Million. The 1990 Trust would pay a gift tax of approximately \$23.1 Million. In addition, the 1990 Trust would have to repay margin loans on the ABS shares of approximately \$5 Million.

Because the ABS shares had a low tax basis (approximately \$3 per share), selling the shares to pay the gift tax would incur a significant capital gains tax. So Merrill Lynch proposed the 1990 Trust adopt a hedging strategy, in which the trust would use the ABS shares as collateral for a loan to pay the gift tax.

The gift was made in August 1996, when the ABS shares were trading at approximately \$40. However, Merrill Lynch waited until April 1997 to place the collar. By then, the price of the ABS shares had declined to approximately \$31. The evidence will be that Merrill Lynch devised the wealth protection and tax saving strategies the 1990 and 1996 Trusts implemented and that Dolores' children explicitly relied on Merrill Lynch's advice and adopted its recommendations. Stated simply, Merrill Lynch's plan was to make a maximum gift to the children and pay the gift taxes now rather than estate taxes later. A hedge would

protect the remaining ABS shares in the 1990 Trust. This plan assumed Dolores would survive the gift by at least three years and that all of her children would survive her. If the plan worked as intended, at Dolores' death the ABS shares in the 1990 Trust would be sold to repay the loan, and there would be no capital gain because the shares would receive a stepped-up basis. In some aspects Merrill Lynch proposed a fairly standard tax saving plan. But as the evidence will show, it was fraught with contingencies for which Merrill Lynch failed to plan.

The hedge Merrill Lynch proposed would be a "collar," consisting of a put and a call. The 1990 Trust would purchase a put to establish a floor price for the ABS shares, to protect their value in the trust should the share price drop below a predetermined level. This would protect the collateral value of the shares to support the loan needed to pay the gift tax and repay the margin loans.

To finance the put, Merrill Lynch proposed the 1990 Trust would sell a call on the shares. Merrill Lynch told the children the collar would be at "zero-cost" to the 1990 Trust.

Claimant alleges Merrill Lynch violated its duty to the O'Keefe family in the following respects:

- Merrill Lynch negligently advised on the options available to hedge the 1990 Trust. An option of simply buying a put on the ABS shares would have been preferable to the European Collar Merrill Lynch recommended.
- Merrill Lynch also negligently delayed placing the collar on the ABS shares in the 1990 Trust. Instead of doing so when the gift to the children was made in August 1996, Merrill Lynch waited until April 1997. This delay, which was non-strategic, allowed the ABS share price to drop from \$39 in August 1996 to \$31 by the following April, meaning that the Trust could not borrow as much as it needed to pay the gift tax and that the call strike price (even if Merrill Lynch had fairly priced it) was lower than it should have been.
- Merrill Lynch arbitrarily set the call on the original collar ("Collar-1") at an artificially low price, to its financial advantage and to the financial loss and detriment of the 1990 Trust. Merrill Lynch repeated this about a year later when it adjusted the strike prices on the put and call under a liquidity contract ("Collar-2") in response to Anthony's objection that the 1990 Trust was not benefitting from increases in the price of the ABS shares. The evidence will show that by its unfair pricing, Merrill Lynch realized several million dollars of profit at the expense of the Trust, which it failed to disclose.
- Merrill Lynch improperly permitted Michael to withdraw \$1.1 Million from his sub-trust, in violation of the no-invasion restriction in the trust and without the required signatures of the other two trustees.

- Merrill Lynch failed to plan for the contingency that a child might predecease Dolores. Therefore, Michael's death in September 1996 caused additional estate taxes of \$7.5 Million on the \$12.2 Million corpus of his sub-trust.
- Because Merrill Lynch delayed placing Collar-1, the 1990 Trust was \$9 million short of what it needed to pay the \$23 Million gift tax. Accordingly, Michael's sub-trust had to "loan" \$3 million to the 1990 Trust for its share of the shortfall, even though everyone knew that the loan would not be repaid because the 1990 Trust was insolvent. This "loan" left only \$1.7 Million in Michael's 1996 Sub-Trust.
- When Dolores failed to survive the gift by three years, the 1990 Trust was subject to \$13 million of estate tax on the gift tax. The trustees of the 1996 Sub-Trust, supported by Merrill Lynch, took the remainder of Michael's 1996 Sub-Trust to apply to help pay the additional tax, leaving Michael's 1996 Sub Trust insolvent.
- Following Dolores' death, Merrill Lynch caused the 1990 Trust to close Collar-2 (also referred to as the liquidity contract), at a loss to the trust of approximately \$12 Million.

In substance, Merrill Lynch's wealth protection planning wiped out what should have been an inheritance to Michael's children of approximately \$20 Million.

Respondents submitted the following summary:

In his First Amended Statement of Claim, Claimant alleged that Respondents participated in and were responsible for changing Dolores O'Keefe's estate plan as reflected in the Dolores W. O'Keefe Living Trust dated September 20, 1990 ("1990 Trust") as well as other documents and transactions. Those alleged changes to Dolores O'Keefe's plan included the creation of the Dolores W. O'Keefe Irrevocable Trust dated July 12, 1996 ("1996 Trust") and gifts that resulted in the transfer of securities from Dolores O'Keefe to the 1990 and 1996 Trusts. Although the changes in the plan were approved by the Johnson County, Kansas Probate Court, Claimants alleged that Respondents knew or should have known that the changes to Dolores O'Keefe's plan and the subsequent gifts and transfers were contrary to Dolores O'Keefe's plan and objectives and were otherwise imprudent, improper and unlawful. Claimant also alleged that Respondents provided certain information, advice and recommendations to the entities that Claimant represents and failed to provide other information and advice, including information about life insurance, derivative contracts and other options available to the 1990 Trust, failed to disclose other information to the entities Claimant represents, entered into loans, derivative contracts and other transactions with the 1990 Trust, the 1996 Trust and subtrusts of the 1996 Trust and allowed withdrawals and other transactions to be effected in connection with the trusts. Claimant also alleged that certain transactions were improperly delayed and were priced inappropriately.

On the basis of the allegations in the First Amended Statement of Claim and contentions in Claimant's Arbitration Brief as well as evidence and arguments at the hearing, Claimant

asserted the following theories for recovery from Respondents: (1) negligence; (2) breach of fiduciary duty; (3) intentional misrepresentation; (4) negligent misrepresentation; (5) violations of federal securities laws and regulations, including SEC Rules and New York Stock Exchange and NASD rules set out in Claimant's Arbitration Brief; and (6) restitution and disgorgement.

Respondents denied the allegations of wrongdoing set forth in Claimant's First Amended Statement of Claim. Respondents specifically alleged that they were not hired to participate and did not participate in the tax and estate planning that resulted in the Court-approved 1996 Trust and subsequent gifts. Respondents further asserted that they fulfilled their brokerage duties owed to their customers by fulfilling their clients' orders promptly and appropriately. Respondents denied engaging in any misconduct whatsoever.

#### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested an award of unspecified compensatory damages and unspecified punitive damages.

In the First Amended Statement of Claim, Claimant requested an award as follows:

- a. Compensatory damages in the amount of \$40,000,000.00 or according to the proof at the hearing of this Statement of Claim;
- b. Disgorgement of fees, commissions and profits in the amount of \$5,000,000.00;
- c. Reasonable punitive damages as determined by proof at the hearing;
- d. Pre-judgment interest as allowed by law and for costs and reasonable attorneys' fees; and
- e. All other and further proper relief.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Merrill Lynch, Pierce Fenner & Smith, Inc. did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and offered testimony at the hearing is bound by the determination of the arbitration panel on all issues submitted.

By letter dated November 26, 2001, the parties were advised of the Arbitration Panel's decisions on Respondents' Motion to Dismiss and Claimant's Motion to Amend Claim. The Arbitration Panel decided as follows:

It is the determination of the Arbitration Panel in the above case that:

1. The case is not is not [sic] time barred by applicable statutes of limitations.
2. Merrill Lynch & Company, Inc. and Merrill Lynch International Bank, Limited are properly before the panel and subject to arbitration.

It is therefore the decision of the Panel that the Motion to dismiss is denied. further, the Panel sustains the motion of the Claimant to amend its claim and add Merrill, Lynch, Pierce, Fenner & Smith, Inc. to the list of Claimants [sic].

Claimant moved to amend the claim to conform to the pleadings by including the entire 1990 trust into the claim. The panel approved the amendment.

At the hearing, Respondents moved to have the case dismissed against all Respondents. The Arbitration Panel determined that the case should be dismissed against the individually named Respondents. The records of Thomas M. Freeman, Richard J. Paradise, Bradley Stratton and Chad G. Bushaw are to be expunged of any mention of the case.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

### AWARD

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

1. Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. shall be and hereby is liable for and shall pay to John P. Biscanin, Co-Administrator of the Estate of Dolores W. O'Keefe, Successor Conservator of Dolores W. O'Keefe, Successor Trustee of the Michael A. O'Keefe Sub-Trust of the Dolores W. O'Keefe Living Trust dated September 20, 1990, and Successor Trustee of the Michael A. O'Keefe Sub-Trust of the Dolores W. O'Keefe Irrevocable Trust dated July 12, 1996 the sum of \$100,000.00 (**One Hundred Thousand Dollars and no Cents**) as compensatory damages.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Thomas M. Freeman, Richard J. Paradise, Bradley Stratton and Chad G. Bushaw registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Thomas M. Freeman, Richard J. Paradise, Bradley Stratton and Chad G.

Bushaw must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$250.00

#### **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. In this matter, the member firm is Merrill Lynch, Pierce Fenner & Smith, Inc.

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing Date January 21, 2002 through February 1, 2002, adjournment requested jointly by the parties. Postponement fees split between the parties. = \$1,000.00

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

Two (2) Pre-hearing session(s) with Panel x \$1,200.00 = \$ 2,400.00

Pre-hearing conference(s):	July 25, 2001	1 session
	April 11, 2002	1 session

Twenty three (23) Hearing sessions x \$1,200.00 = \$27,600.00

Hearing Date(s):	April 29, 2002	2 sessions
	April 30, 2002	2 sessions
	May 1, 2002	2 sessions
	May 2, 2002	2 sessions
	May 3, 2002	2 sessions
	May 6, 2002	2 sessions
	May 7, 2002	3 sessions
	May 8, 2002	3 sessions
	May 9, 2002	3 sessions
	May 10, 2002	2 sessions

Total Forum Fees = \$30,000.00

The Arbitration Panel has assessed \$15,000.00 of the forum fees to John P. Biscanin, Co-Administrator of the Estate of Dolores W. O'Keefe, Successor Conservator of Dolores W. O'Keefe, Successor Trustee of the Michael A. O'Keefe Sub-Trust of the Dolores W. O'Keefe Living Trust dated September 20, 1990, and Successor Trustee of the Michael A. O'Keefe Sub-Trust of the Dolores W. O'Keefe Irrevocable Trust dated July 12, 1996.

The Arbitration Panel has assessed \$15,000.00 of the forum fees to Merrill Lynch, Pierce Fenner & Smith, Inc.

### **Fee Summary**

Claimant, John P. Biscanin, Co-Administrator of the Estate of Dolores W. O'Keefe, Successor Conservator of Dolores W. O'Keefe, Successor Trustee of the Michael A. O'Keefe Sub-Trust of the Dolores W. O'Keefe Living Trust dated September 20, 1990, and Successor Trustee of the Michael A. O'Keefe Sub-Trust of the Dolores W. O'Keefe Irrevocable Trust dated July 12, 1996, shall be and hereby is liable for:

Initial Filing Fee = \$ 250.00

Adjournment Fee	= \$ 500.00
<u>Forum Fees</u>	= <u>\$15,000.00</u>
Total Fees	= \$15,750.00
<u>Less payments</u>	= <u>\$ 1,750.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$14,000.00

Respondent, Merrill Lynch, Pierce Fenner & Smith, Inc., shall be and hereby is liable for:

Member Fees	= \$ 3,800.00
Adjournment Fee	= \$ 500.00
<u>Forum Fees</u>	= <u>\$15,000.00</u>
Total Fees	= \$19,300.00
<u>Less payments</u>	= <u>\$ 4,300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$15,000.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Richard H. Potter - Public Arbitrator, Presiding Chair  
Arthur F. Dewsberry - Public Arbitrator  
Thomas B. Phillips, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Richard H. Potter  
Richard H. Potter  
Public Arbitrator, Presiding Chair

June 30, 2002  
Signature Date

/s/ Arthur F. Dewsberry  
Arthur F. Dewsberry  
Public Arbitrator

June 28, 2002  
Signature Date

/s/ Thomas B. Phillips  
Thomas B. Phillips, Esq.  
Non-Public Arbitrator

July 1, 2002  
Signature Date

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Adjournment Fee	= \$ 500.00
<u>Forum Fees</u>	= \$15,000.00
Total Fees	= \$15,750.00
<u>Less payments</u>	= \$ 1,750.00
Balance Due NASD Dispute Resolution, Inc.	= \$14,000.00

Respondent, Merrill Lynch, Pierce Fenner & Smith, Inc., shall be and hereby is liable for:

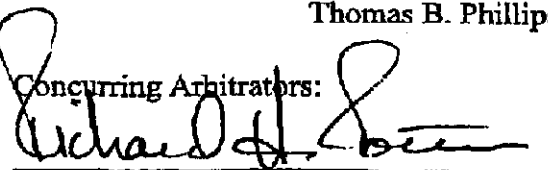
Member Fees	= \$ 3,800.00
Adjournment Fee	= \$ 500.00
<u>Forum Fees</u>	= \$15,000.00
Total Fees	= \$19,300.00
<u>Less payments</u>	= \$ 4,300.00
Balance Due NASD Dispute Resolution, Inc.	= \$15,000.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Richard H. Potter - Public Arbitrator, Presiding Chair  
Arthur F. Dewsberry - Public Arbitrator  
Thomas B. Phillips, Esq. - Non-Public Arbitrator

Concurring Arbitrators:



Richard H. Potter  
Public Arbitrator, Presiding Chair

6.30.02  
Signature Date

Arthur F. Dewsberry  
Public Arbitrator

Signature Date

Thomas B. Phillips, Esq.  
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.  
Arbitration No. 00-05757  
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NASD Dispute Resolution, Inc.  
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Less payments  
= \$ 1,750.00  
Balance Due NASD Dispute Resolution, Inc.  
= \$14,000.00

Respondent, Merrill Lynch, Pierce Fenner & Smith, Inc., shall be and hereby is liable for:

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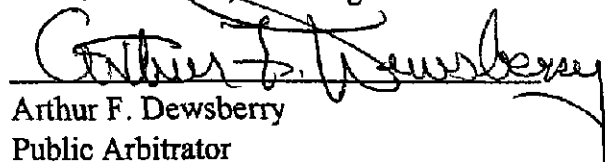
All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

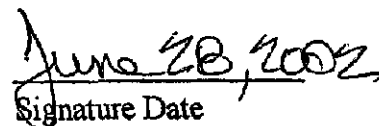
Richard H. Potter - Public Arbitrator, Presiding Chair  
Arthur F. Dewsberry - Public Arbitrator  
Thomas B. Phillips, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Richard H. Potter  
Public Arbitrator, Presiding Chair

  
Arthur F. Dewsberry  
Public Arbitrator

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

  
Signature Date

NASD Dispute Resolution, Inc.

Arbitration No. 00-05757

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Adjournment Fee	= \$ 500.00
<u>Forum Fees</u>	= \$15,000.00
Total Fees	= \$15,750.00
<u>Less payments</u>	= \$ 1,750.00
Balance Due NASD Dispute Resolution, Inc.	= \$14,000.00

Respondent, Merrill Lynch, Pierce Fenner &amp; Smith, Inc., shall be and hereby is liable for:

Member Fees	= \$ 3,800.00
Adjournment Fee	= \$ 500.00
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**ARBITRATION PANEL**

Richard H. Potter - Public Arbitrator, Presiding Chair

Arthur F. Dewsberry - Public Arbitrator

Thomas B. Phillips, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

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Richard H. Potter  
Public Arbitrator, Presiding Chair

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Signature Date


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Arthur F. Dewsberry  
Public Arbitrator

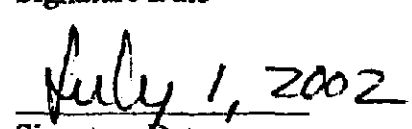
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Signature Date

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Thomas B. Phillips, Esq.  
Non-Public Arbitrator

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Signature Date