

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

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In the Matter of the Arbitration Between:

Brian Krauss, Claimant v. Merrill Lynch, Pierce, Fenner and Smith, Inc. and James H. Bais,  
Respondents

Case Number: 01-01466

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

For Claimant:

Michael Rodriguez, Esq.  
Rodriguez & Ricci  
Ridgewood, New Jersey

For Respondents:

Daren A. Luma, Esq.  
Merrill Lynch Pierce Fenner  
& Smith Inc.  
New York, New York

**CASE INFORMATION**

Statement of Claim filed: March 26, 2001

Claimant's Uniform Submission Agreement signed: April 6, 2001

Joint Statement of Answer filed by Respondents: June 26, 2001

Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc.'s Uniform Submission Agreement  
signed: June 25, 2001

Respondent James H. Bais' Uniform Submission Agreement signed: June 21, 2001

**CASE SUMMARY**

Claimant alleged negligence and possible fraud. The causes of action related to the purchase of Intuit and Adobe.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted the following defenses: failure to state a claim upon which relief could be granted, ratification, estoppel, assumption of risk, laches, unclean hands, and compliance with all

applicable securities laws and regulations.

### **RELIEF REQUESTED**

Claimant requested \$40,000.00 in compensatory damages, \$10,000 in punitive damages, and sought reimbursement for attorney's fees and costs of arbitration

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and sought reimbursement for fees and costs of arbitration.

### **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, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. is liable to and shall pay Claimant \$15,000.00 in compensatory damages.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent James H. Bais' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent James H. Bais must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) All other relief not expressly granted is denied.

### **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	= \$ 175.00
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#### **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(s) at the time of the events giving rise to the dispute. In this matter, the member firm Merrill Lynch Pierce Fenner & Smith is a party.

Member Surcharge	= \$ 800.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 1000.00
Total Member Fees	= \$ 2400.00

#### **Adjournment Fees**

The following adjournment fees are assessed:

March 20, 2002, adjournment requested by Brian Krauss	= \$ 450.00
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#### **Forum Fees and Assessments**

The Arbitrator/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. Forum fees associated with these proceedings are:

(1) Pre-hearing conference session(s) with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference(s): January 16, 2002	1 session

(1) Hearing sessions @ \$450/session	= \$ 450.00
Hearing(s): May 16, 2002	1 session

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Total Forum Fees	= \$ 900.00
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1. The Arbitrator has assessed \$ 450.00 of the forum fees against Claimant.
2. The Arbitrator has assessed \$ 450.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

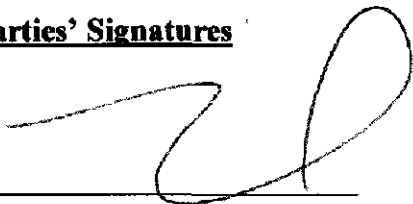
Initial Filing Fee	= \$ 175.00
Adjournment Fee	= \$ 450.00
Forum Fees	= \$ 450.00
Total Fees	= \$ 1075.00
<u>Less payments</u>	<u>= \$ 1075.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 00.00
  
3. Respondent Merrill Lynch be and hereby is solely liable for:

Member Fees	= \$ 2400.00
Total Fees	= \$ 2400.00
<u>Less payments</u>	<u>= \$ 2400.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 00.00
  
4. Respondents be and hereby are jointly and severally liable for:

Forum Fee	= \$ 450.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 450.00

All balances are due and payable to NASD Dispute Resolution, Inc.

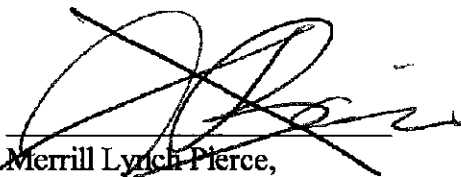
**Parties' Signatures**



Brian Krauss  
Claimant

5/30/02

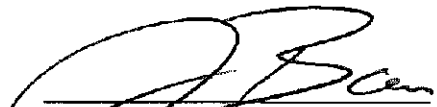
Signature Date



Merrill Lynch Pierce,  
Fenner and Smith  
Respondent

6/4/02

Signature Date



James H. Bais  
Respondent

6/4/02

Signature Date



DAREN A. LUMA, ESQ.  
on behalf of  
Merrill Lynch Pierce Fenner & Smith

6/4/02

**NASD Dispute Resolution, Inc.**

**Arbitration No. 01-01466**

**Award Page 6 of 6**

## ARBITRATION PANEL

**Frank Muller**

Public Arbitrator, Presiding Chair

**Concurring Arbitrators' Signature**

Ed Miller

**Frank Muller**

### Public Arbitrator, Presiding Chair

6/14/02

**Signature Date**

June 20, 2002

**Date of Service (For NASD office use only)**