

**STIPULATED AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Edwin Garrison

Case No. 02-00576

Hearing Site: Omaha, Nebraska

Names of Respondents

Merrill Lynch Fenner & Smith Inc.  
Thomas J. Clark  
Grant G. Clark  
The Clark Group

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**REPRESENTATION OF PARTIES**

For Claimant Edwin Garrison ("Claimant"): Thomas S. Reavely, Esq., Whitfield & Eddy, P.L.C., Des Moines, Iowa.

For Respondents Clark Group, Merrill Lynch Fenner & Smith Inc., Thomas Clark and Grant Clark: Mark H. Moore, Esq., Jaffe & Asher LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: February 14, 2002.

Claimant signed the Uniform Submission Agreement: December 12, 2001.

Statement of Answer filed by Respondents on or about: May 14, 2002.

Respondent Merrill Lynch Fenner & Smith Inc., Respondents Thomas Clark and Grant Clark did not sign the Uniform Submission Agreements, but agreed to arbitrate by submitting to the panel's jurisdiction.

**CASE SUMMARY**

Claimant alleged that Merrill Lynch Fenner & Smith Inc. and the individual Respondents had recommended an unsuitable investment strategy in unit trusts and had engaged in churning, in violation of standards established by the NASD.

Merrill Lynch Fenner & Smith Inc. and the individual Respondents denied the allegations in the Statement of Claim. Merrill Lynch Fenner & Smith Inc. and the individual Respondents contended that Claimant, who was a sophisticated businessman and long time investor, made his own investment decision in 1992 to invest aggressively in order to build up his inadequate

retirement funds. Although this strategy worked quite successfully for many years, he sustained losses when the markets declined precipitously, beginning in March 2000. Moreover, Merrill Lynch Fenner & Smith Inc. and the individual Respondents contended that the minimal turnover in the account would not support a claim of churning.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$800,000.00 as compensatory damages, plus prejudgment interest, costs, punitive damages and reasonable attorneys' fees.

Merrill Lynch Fenner & Smith Inc. and the individual Respondents asked the Panel to dismiss the Statement of Claim in its entirety and to assess all fees and costs against Claimants.

### **ISSUES CONSIDERED AND DECIDED**

Prior to any hearings in the Arbitration, the Parties (other than Grant Clark) entered into settlement agreements providing for full releases for Claimant and Respondents, including Grant Clark. The Respondents have made all settlement payments required by those agreements, which are not the subject of this award.

Following an investigation of the facts in the Arbitration, the following determinations were made by the parties: (1) Grant Clark joined Merrill Lynch Fenner & Smith Inc. in January 1999 and worked as a financial consultant with his father, respondent Thomas Clark, under a commission sharing arrangement within Merrill Lynch Fenner & Smith Inc.; (2) Grant Clark did not make any investment recommendation which was the subject of the arbitrations, and had little or no contact with the Claimant; (3) Grant Clark had not done anything wrong, nor had he committed any of the wrongful acts alleged in the Statements of Claim, and was not liable to Claimant under any of the claims advanced in the Statements of Claim. The parties have submitted a stipulation to the facts set forth herein.

The Parties are jointly requesting that the Panel issue this award for the sole purpose of having the NASD expunge all references to this arbitration, including any references on the CRD System, from the record of Grant Clark.

The Parties have agreed that the award in this matter may be executed in counter-party copies or that a handwritten, signed award may be entered.

### **AWARD**

After considering the pleadings and the stipulations by the Parties, the Panel has decided in full and final resolution of the issues submitted for determination:

1. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Grant G. Clark's registration records maintained by the

NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to M Members 99-09 and 99-54, Respondent Grant G. Clark must obtain confirmation from a court of competent jurisdiction before the CRD will execute the impingement directive.

2. Each Party shall bear his, her or its respective costs, including attorneys' fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$	375.00
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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 at the time of the event giving rise to the dispute. In this matter, the member firm is Merrill Lynch Fenner & Smith Inc.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	7,000.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

April 1-3, 2003 Hearing dates, requested by Claimant, Edwin Garrison and Merrill Lynch Pierce Fenner & Smith Inc. (split 50/50)	\$	1,200.00
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#### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Number [1] Pre-hearing session with Panel x \$1,200.00	\$	1,200.00
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Pre-hearing conference: September 26, 2002 1 session

The Arbitration Panel has assessed \$600.00 the forum fees to Edwin Garrison.  
The Arbitration Panel has assessed \$600.00 of the forum fees jointly and severally to Merrill Lynch Fenner & Smith Inc., Thomas J. Clark, Grant G. Clark, and The Clark Group.

Fee Summary

Claimant, Edwin Garrison, shall be and hereby is liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 600.00
<u>Total Fees</u>	<u>= \$1,575.00</u>
<u>Less payments</u>	<u>= \$1,875.00</u>
Refund due to the Claimant, Edwin Garrison	= \$ 300.00

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

Member Fees	= \$7,000.00
<u>Adjournment Fee</u>	<u>= \$ 600.00</u>
<u>Total Fees</u>	<u>= \$7,600.00</u>
<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondents, Merrill Lynch Fenner & Smith Inc., Thomas J. Clark, Grant G. Clark, and The Clark Group, shall be and hereby are jointly and severally liable for:

Forum Fee	= \$ 600.00
<u>Less Payments</u>	<u>= \$ 000.00</u>
<u>Total Fees</u>	<u>= \$ 600.00</u>
Balance Due NASD Dispute Resolution	

**All balances are due to NASD Dispute Resolution**

ARBITRATION PANEL

George A. Abbott - Public Arbitrator, Presiding Chair  
Larry R. Trussell - Public Arbitrator  
John R. Lepley - Non-Public Arbitrator:

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/s/ George A. Abbott  
George A. Abbott  
Public Arbitrator, Presiding Chair

10/23/03  
Signature Date

/s/ Larry R. Trussell  
Larry R. Trussell  
Public Arbitrator

10/27/03  
Signature Date

/s/ John R. Lepley  
John R. Lepley  
Non-Public Arbitrator

10/27/03  
Signature Date

*George A. Abbott*

George A. Abbott  
Public Arbitrator, Presiding Chair

*10/23/2003*

Signature Date

Larry R. Trussell  
Public Arbitrator

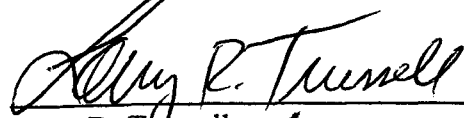
Signature Date

John R. Lepley  
Non-Public Arbitrator

Signature Date

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George A. Abbott  
Public Arbitrator, Presiding Chair

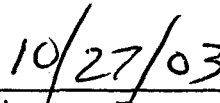


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Larry R. Tussell  
Public Arbitrator

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Signature Date



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Signature Date

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John R. Lepley  
Non-Public Arbitrator

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Signature Date

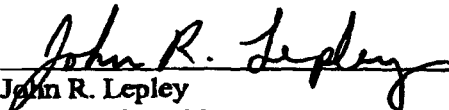
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Public Arbitrator, Presiding Chair

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