

**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Robert S. Cohen and Maryann Kuzel Cohen (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and John Ury (Respondents)

Case Number: 02-05189

Hearing Site: New York, New York

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Nature of the Dispute: Customer v. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants Robert S. Cohen ("R. Cohen") and Maryann Kuzel Cohen ("M. Cohen") hereinafter collectively referred to as "Claimants": Nicholas J. Taldone, Esq., Law Offices of Nicholas J. Taldone, Clearwater, FL.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and John Ury ("Ury") hereinafter collectively referred to as "Respondents": Thomas L. Weisenbeck, Esq., Bressler, Amery & Ross, P.C., Florham Park, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: August 30, 2002.

Amended Statements of Claim filed on or about: October 29, 2002 and January 13, 2004.

R. Cohen signed the Uniform Submission Agreement: August 12, 2002.

M. Cohen signed the Uniform Submission Agreement: August 12, 2002.

Joint Statement of Answer filed by Respondents on or about: November 25, 2002.

MLPFS did not sign the Uniform Submission Agreement.

Ury did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: violation of FL Securities Investor Protection Act or NJ Securities Act; breach of fiduciary duty; negligence; breach of contract; failure to supervise; respondeat superior; unsuitability; failure to supervise; violation of other NASD Rules and Regulations. The causes of action relate to common stock.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages greater than \$50,000.00 but less than \$100,000.00; restitution of account losses and income; rescission of trades; punitive damages; interest; costs, expenses, and disbursements; attorneys' fees; and such other relief as the arbitration panel deems proper.

Respondents requested dismissal of the Statement of Claim in its entirety with prejudice; an order expunging or striking this claim from Ury's permanent registration records maintained by the CRD; and award Respondents costs and other further relief as they deem just and proper.

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

Respondents did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim are bound by the determination of the Panel on all issues submitted.

Claimants dismissed Respondent John Ury with prejudice on March 4, 2004. Claimants and Respondent MLPFS entered into a confidential settlement agreement. Therefore, the parties submit this Stipulated Award to the Panel for its consideration and requested that it be entered.

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**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimants' claims are hereby denied and dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent John Ury's 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, Respondent John Ury must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Each party shall bear its own costs and expenses associated with the above-referenced arbitration, including attorneys' fees, except as fees are specifically addressed below.

4. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$225.00
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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 events giving rise to the dispute. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member Surcharge	= \$1,100.00
Pre-Hearing Process Fee	= \$750.00
Hearing Process Fee	= \$1,700.00
<b>Total Member Fees</b>	<b>= \$3,550.00</b>

#### **Forum Fees and Assessments**

The 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. Forum fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with the Panel @ \$750.00/session	= \$1,500.00
Pre-hearing conferences: April 18, 2003 1 session	
December 16, 2003 1 session	
<b>Total Forum Fees</b>	<b>= \$1,500.00</b>

1. The Panel has assessed \$1,500.00 of the forum fees against MLPFS.

### **Fee Summary**

1. Claimants are jointly and severally liable for:


<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 975.00
<u>Refund Due to Claimants</u>	= \$ 750.00

2. Respondent MLPFS is solely liable for:

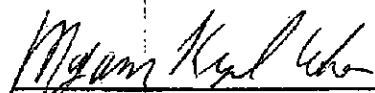
Member Fees	= \$3,550.00
Forum Fees	= \$1,500.00
<hr/> Total Fees	<hr/> = \$5,050.00
Less payments	= \$1,850.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$3,200.00

All balances are due and payable to NASD Dispute Resolution.

**Parties' Signatures**

  
Robert S. Cohen  
Claimant

4/3/04  
Signature Date

  
Maryann Kuzel Cohen  
Claimant

4/3/04  
Signature Date

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Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Respondent

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Signature Date

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John Ury  
Respondent

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Signature Date

**Parties' Signatures**

\_\_\_\_\_  
Robert S. Cohen  
Claimant

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

\_\_\_\_\_  
Maryann Kuzel Cohen  
Claimant

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

*Susan E. Tarkenton for*  
\_\_\_\_\_  
Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Respondent

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

*John Ury*  
\_\_\_\_\_  
John Ury  
Respondent

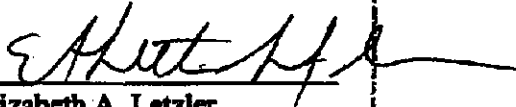
*5/4/04*  
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Signature Date

**ARBITRATION PANEL**

Elizabeth A. Letzler  
Edward P. Harewood, MBA  
Sandra J. Kiss

- Public Arbitrator, Presiding Chair  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Elizabeth A. Letzler  
Public Arbitrator, Presiding Chair

6/28/04  
Signature Date

\_\_\_\_\_  
Edward P. Harewood, MBA  
Public Arbitrator

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

\_\_\_\_\_  
Sandra J. Kiss  
Non-Public Arbitrator

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

July 6, 2004  
Date of Service (For NASD office use only)

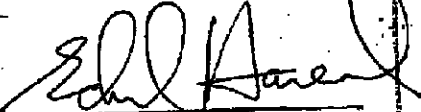
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Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Elizabeth A. Letzler  
Public Arbitrator, Presiding Chair



Edward P. Harewood, MBA  
Public Arbitrator

Sandra J. Kiss  
Non-Public Arbitrator

Signature Date

7/6/04  
Signature Date

Signature Date

July 6, 2004  
Date of Service (For NASD office use only)



ARBITRATION PANEL

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Edward P. Harewood, MBA  
Sandra J. Kiss

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- Public Arbitrator  
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Elizabeth A. Letzler  
Public Arbitrator, Presiding Chair

Signature Date

Edward P. Harewood, MBA  
Public Arbitrator

Signature Date

  
Sandra J. Kiss  
Non-Public Arbitrator

6/30/04  
Signature Date

July 6, 2004  
Date of Service (For NASD office use only)