

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

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In the Matter of the Arbitration Between:

Dianne Fileccio, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Paul Tuchman, Respondents

Case Number: 02-05193

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant, Dianne Fileccio ("Fileccio") hereinafter referred to as "Claimant": Joseph O'Donnell, Esq., Investment Recovery Centers, Washington, D.C.

Respondents, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Paul Tuchman ("Tuchman"), hereinafter collectively referred to as "Respondents": David J. Campbell, Esq., and Brian D. Donnelly, Esq., Bressler, Amery & Ross, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: August 27, 2002.

Claimant Dianne Fileccio signed the Uniform Submission Agreement: August 14, 2002.

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

Respondent Merrill Lynch signed the Uniform Submission Agreement: October 22, 2002.

Respondent Tuchman signed the Uniform Submission Agreement: February 4, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: fraud; breach of fiduciary duty; negligence; breach of contract; violation of NASD and NYSE Rules; violation of federal securities laws; and, violation of state securities laws. The causes of action relate to common stock.

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

**RELIEF REQUESTED**

Claimant requested \$164,251.00 in compensatory damages, \$100,00.00 in punitive damages, interest, attorneys' fees, costs and all other relief that the Panel may award.

Respondents requested dismissal of the Statement of Claim in its entirety, that the costs of this proceeding be assessed against the Claimant and that the Panel award such other relief as it may deem appropriate.

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

The parties entered into a confidential settlement agreement. In connection with that agreement, Claimant dismissed all claims with prejudice against the Respondents.

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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied and dismissed with prejudice.
2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Paul Tuchman's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Member 99-09 and 99-54, Respondent Paul Tuchman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The parties shall bear their own costs and expenses associated with the above-referenced arbitration.
4. Any and all relief not specifically addressed herein is denied.

### **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

= \$300.00

### **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 is a party.

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
Total Member Fees	= \$5,200.00

### **Adjournment Fees**

The following adjournment fees are assessed:

January 6, 7, 8, 2004 adjournment requested by the Respondents = Waived

### **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:

Four (4) Pre-hearing conferences with the Panel @ \$1,125.00	=	\$4,500.00
Pre-hearing conference:		
May 5, 2003	1 session	
August 13, 2003	1 session	
December 31, 2003	1 session	
February 11, 2004	1 session	
Total Forum Fees		= \$4,500.00

1. The Panel has assessed \$2,250.00 of the forum fees against the Claimant.
2. The Panel has assessed \$2,250.00 of the forum fees jointly and severally against the Respondents.

### **Fee Summary**

1. Claimant is liable for:	
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,550.00
Less payments	= \$ 2,550.00
Balance Due NASD Dispute Resolution	= \$ .00

NASD Dispute Resolution, Inc.

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2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
Total Fees	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill Lynch and Tuchman are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,250.00
Total Fees	= \$ 2,250.00
<u>Less payments</u>	= \$ 2,250.00
Balance Due NASD Dispute Resolution	= \$ .00

**Parties' Signature Page**

Joseph O'Donnell  
Joseph O'Donnell,  
Attorney for the Claimant

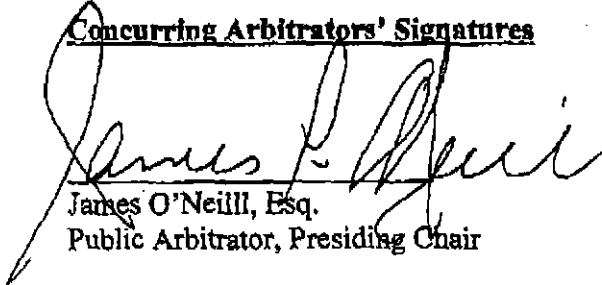
11/17/05  
Date

Brian D. Donnelly, Esq.  
Attorney for the Respondents

11/21/05  
Date

**ARBITRATION PANEL**

James O'Neill, Esq.	-	Public Arbitrator, Presiding Chairperson
Eric Nachman, Esq.	-	Public Arbitrator
J. Julie Jason	-	Non Public-Arbitrator

**Concurring Arbitrators' Signatures**

James O'Neill, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Eric Nachman, Esq.  
Public Arbitrator

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Signature Date

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J. Julie Jason  
Non-Public Arbitrator

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Signature Date

November 25, 2005  
Date of Service (For NASD office use only)

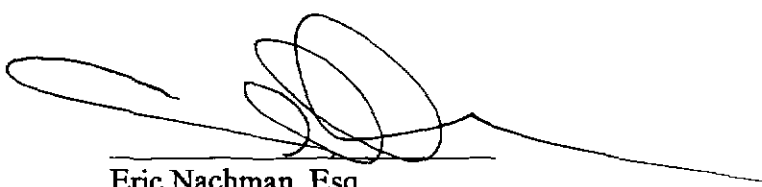
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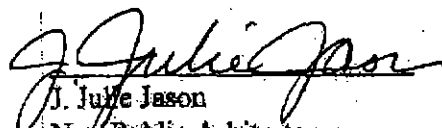
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