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

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In the Matter of the Arbitration Between:

Names of the Claimants

Octavio Leon  
Socorro J. De Leon  
Myriam Leon

Case Number: 02-05353

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Patrick J. Dwyer  
Peter G. Amendolair

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Octavio Leon, Socorro J. De Leon, and Myriam Leon, hereinafter collectively referred to as "Claimants": Mercedes Busto, Esq., Busto & Jennings, P.A., Coral Gables, Florida until February 3, 2003. Thereafter, Claimants were represented by Jeffrey B. Kaplan, Esq., Dimond, Kaplan & Rothstein, P.A., Miami, Florida until March 14, 2003. On or about September 18, 2003, Mark F. Raymond, Esq., Tew Cardenas Rebak Kellogg Lehman DeMaria Tague Raymond & Levine, LLP, Miami, Florida, entered an appearance on behalf of Claimants.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"), Patrick J. Dwyer ("Dwyer"), and Peter G. Amendolair ("Amendolair"), hereinafter collectively referred to as "Respondents": Alex Sabo, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: September 9, 2002.  
Claimants signed the Uniform Submission Agreements: August 26, 2002.  
Statement of Answer filed by Respondents on or about: November 22, 2002.  
Reply to Statement of Answer filed by Claimants on or about: December 5, 2003.  
Respondent Dwyer signed the Uniform Submission Agreement: December 14, 2002.  
Respondent Merrill signed the Uniform Submission Agreement: December 15, 2002.  
Respondent Amendolair signed the Uniform Submission Agreement: December 23, 2002.

**CASE SUMMARY**

Claimants alleged that Respondents recommended unsuitable investments that were too risky in light of Claimants' need to preserve their assets for retirement and that the Claimants sustained substantial losses in their accounts as a direct result of Respondents' recommendations and account mismanagement. Claimants

contended that Respondents violated Florida securities law and common law. The causes of action relate to, among others, the purchase in Claimants' accounts of shares of the Merrill Lynch Focus Twenty Fund.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim, and contended that any losses incurred by Claimants resulted from their decision to pursue an aggressive investment strategy and to ignore advice from Respondents Merrill and Dwyer to take a more conservative approach. Respondent Amendolair contended that he never dealt with Claimants and that his only involvement with Claimants consisted of sending a welcome letter to them after they opened a managed account.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$435,000.00; punitive damages in the amount of \$500,000.00, prejudgment interest, costs of this action, and reasonable attorneys' fees.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety and assess all forum fees and costs against Claimants.

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

On or about November 10, 2003, the parties provided NASD Dispute Resolution with a verbal notice of settlement of the matter.

On or about February 19, 2004, the parties filed with NASD Dispute Resolution a proposed Stipulated Award for review and approval by the Panel.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

After considering the pleadings and the proposed Stipulated Award submitted by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed in its entirety without any finding of fault or liability on the part of Respondents, Claimants, or any other person or entity.
2. Based upon the statement by Claimants that after hiring experienced securities counsel and after discovery, Claimants determined that Claimants' original counsel had named the individual Respondents in error and that the individual Respondents were not personally liable to Claimants under any of the claims advanced in the Statement of Claim, and upon the joint request of the parties, the Panel recommends that all references to the above-captioned arbitration be expunged from Respondent Dwyer's and Respondent Amendolair's permanent 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 Dwyer and Amendolair must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement

directive. All Respondents waive any claim against Claimants relating to the initiation or prosecution of this action.

3. Each party shall bear their respective costs, including attorneys' fees, except forum fees, for which Respondent Merrill is solely responsible.
4. All other requests for relief which are not addressed specifically in this Stipulated Award are denied with prejudice.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent Merrill is a member firm and a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$4,000.00</u>
Total Member Fees	= \$7,000.00

#### **Adjournment Fees**

No adjournments were requested in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

Injunctive relief fees were not assessed in this matter.

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

The Panel has assessed forum fees for each session conducted. A 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 sessions with the Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences: March 10, 2003	1 session

September 19, 2003 1 session

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: October 31, 2003 1 session

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Total Forum Fees = \$2,850.00

Pursuant to the agreement of the parties, the Panel has assessed the total forum fees of \$2,850.00 to Respondent Merrill.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code	= \$1,200.00
Total Fees	= \$1,575.00
Less Payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill is solely liable for:

Member Fees	= \$7,000.00
Forum Fees	= \$2,850.00
Total Fees	= \$9,850.00
Less Payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$2,850.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Thomas Van Tiem, Sr.	-	Public Arbitrator, Presiding Chairperson
Stuart Klein, Esq.	-	Public Arbitrator
Bernard A. D'Amour	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/  
Thomas Van Tiem, Sr.  
Public Arbitrator, Presiding Chairperson

March 2, 2004  
Signature Date

/s/  
Stuart Klein, Esq.  
Public Arbitrator

March 12, 2004  
Signature Date

/s/  
Bernard A. D'Amour  
Non-Public Arbitrator

February 24, 2004  
Signature Date

March 12, 2004  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Thomas A. Van Tiem, Sr.

Thomas Van Tiem, Sr.  
Public Arbitrator, Presiding Chairperson

03-02-04

Signature Date

Stuart Klein, Esq.  
Public Arbitrator

Signature Date

Bernard A. D'Amour  
Non-Public Arbitrator


Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

  
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Stuart Klein, Esq.  
Public Arbitrator

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Signature Date

  
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Signature Date

\_\_\_\_\_  
Bernard A. D'Amour  
Non-Public Arbitrator

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Signature Date

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Stuart Klein, Esq.  
Public Arbitrator

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Bernard A. D'Amour  
Non-Public Arbitrator

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Signature Date

  
2/24/04

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Date of Service (For NASD Dispute Resolution office use only)