

**Stipulated Award  
NASD Dispute Resolution**

---

In the Matter of Arbitration Between:

J.W. & Bernadine Champion,  
  
Claimants,

Case No. 02-05493

vs.

David Doughty and Merrill Lynch,  
Pierce, Fenner & Smith Incorporated

Respondents.

Hearing Site: Dallas, Texas

---

**REPRESENTATION OF PARTIES**

Claimants J.W. and Bernadine Champion, hereinafter referred to as "Claimants," were represented by Andrew L. Jones, Esq., 8144 Walnut Hill Lane, Suite 650, Dallas, Texas 75231.

Respondents David Doughty ("Doughty") and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), hereinafter collectively referred to as "Respondents", were represented by John Kincade, Winstead Sechrest & Minick P.C., 5400 Renaissance Tower, 1201 Elm Street, Dallas, Texas 75270 and Daniel Glatter, Esq., Merrill Lynch, Pierce, Fenner & Smith Incorporated, 222 Broadway, 16th Floor, New York, New York 10038.

**CASE INFORMATION**

The Statement of Claim was filed by Claimants on or about September 10, 2002. Claimants filed an Amended Statement of Claim on February 17, 2003.

The Claimant signed the Uniform Submission Agreement on September 10, 2002.

The Respondents filed the Statement of Answer on or about November 26, 2002. Respondents filed a Supplemental Answer on March 6, 2003.

Respondents Merrill Lynch and Doughty submitted a signed Uniform Submission Agreement on November 27, 2002.

### **CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability and breach of contract, negligence and gross negligence, breach of fiduciary duty and misrepresentation and nondisclosure.

Respondents denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: Claimants' losses were due to their own conduct, Claimants failed to state a claim upon which relief could be granted, Claimants failed to particularize facts establishing a legal theory under which Respondents could be held liable, Claimants directed, authorized, consented to, acquiesced and/or ratified all transactions in their account, Claimants made the investment decisions they complained of, and approved in writing transactions made on their behalf, any losses Claimants suffered were due to their investment decisions or market conditions outside Respondents' control and Respondents acted properly and in good faith.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants J.W. and Bernadine Champion requested:

Compensatory Damages

Punitive Damages

Interest

Attorneys' Fees and Costs

Other Monetary / Non-Monetary Relief, if any: None

In their Answer, Respondents sought reimbursement of their attorneys' fees and expenses from Claimants and an expungement of any reference to this claim or proceeding from Respondent Doughty's registration record.

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

At hearing, Respondents presented a Motion to Dismiss after Claimants case. The panel, after considering the arguments, denied the Motion.

Before closing arguments, the parties settled the case and agreed to the entry of this stipulated award.

### **STIPULATED AWARD**

Pursuant to the testimony presented in this proceeding and the parties' agreement, the Arbitration Panel has determined as follows:

1. Claimants' claims against Respondents are hereby dismissed with prejudice.

2. Respondents' claims against Claimants are hereby dismissed with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned claim from Respondent Doughty's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 01-65, 99-54, and 99-09, Respondent Doughty must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The Panel's determination is specifically based on the testimony and record presented at the Hearing. Based upon such testimony and record, the Panel finds:
  - (a) the claims, as they relate to Respondent Doughty, are without factual basis because Doughty did not receive all information communicated by Claimants; and
  - (b) for that same reason, no sales-practices violation occurred.

Any and all relief not specifically addressed herein is denied with prejudice.

### **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 (Previously waived by NASD Dispute Resolution)

#### **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. Merrill Lynch is a member firm.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **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:

One (1) Pre-hearing session(s) with Panel @ 1,125.00	= \$1,125.00
Date: May 5, 2003      1 session	
Three (3) Hearing Sessions @ \$1,125.00	= \$3,375.00
Date: October 7, 2003      2 sessions	
October 8, 2003      1 session	

---

Total Forum Fees	= \$4,500.00
------------------	--------------

The Panel has assessed one-half forum fees in the amount of \$2,250.00 to Claimants, and furthermore orders payment of these fees waived pursuant to Rule 10332 of the Code of Arbitration Procedure.

The Panel has assessed one-half forum fees in the amount of \$2,250.00 solely to Respondent Merrill Lynch.

**Fee Summary**

Claimant is liable for:

Initial Filing Fee	Waived
Forum Fees	Waived
Total Fees	N/A
Less payments	N/A
Refund Due	N/A

Respondent Merrill Lynch is solely liable for:

Member Fees	=\$5,200.00
Forum Fees	=\$2,250.00
Total Fees	=\$7,450.00
Less payments	=\$5,450.00
Balance Due NASD Dispute Resolution	=\$2,000.00

Respondents Merrill Lynch and Doughty are jointly and severally liable for:

Counterclaim filing fee	=\$ 500.00
Less Payment	=\$ 500.00
Balance Due NASD Dispute Resolution	=\$ 0.00

11/24/2008 16:38 FAX

NASD

008/008

**NASD DISPUTE RESOLUTION  
ARBITRATION NO. 02-05493  
STIPULATED AWARD – PAGE 5 OF 5**

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

**ARBITRATION PANEL**

**Raymond E. Wooldridge – Industry Arbitrator – Panellist & Chair**

**G. Maynard Green – Public Arbitrator – Panelist**

**Anthony E. Krug – Public Arbitrator – Panelist**

**Concurring Arbitrators' Signatures**

Raymond E. Wooldridge, Chair

12-1-03  
Date

**G. Maynard Green, Panelist**

Date \_\_\_\_\_

**Anthony E. Krug, Panelist**

Date \_\_\_\_\_

Date of Service (for NASD Dispute Resolution use only)

DALLAS 11387865513  
15178-41

NASD DISPUTE RESOLUTION  
ARBITRATION No. 02-05493  
STIPULATED AWARD - PAGE 5 OF 5

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

**ARBITRATION PANEL**

Raymond E. Wooldridge - Industry Arbitrator - Panellist & Chair  
G. Maynard Green - Public Arbitrator - Panelist  
Anthony E. Krug - Public Arbitrator - Panelist

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Raymond E. Wooldridge, Chair

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
G. Maynard Green, Panelist

11-24-03  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Anthony E. Krug, Panelist

\_\_\_\_\_  
Date

12/2/03 MM  
\_\_\_\_\_  
Date of Service (for NASD Dispute Resolution use only)

DALLAS 138786553  
15178-41

12/01/03 16:28 FAX 312 238 9239

OFFICE OF DISPUTE RES

008/008

NASD DISPUTE RESOLUTION  
ARBITRATION NO. 02-05493  
STIPULATED AWARD - PAGE 6 OF 6

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

**ARBITRATION PANEL**

Raymond E. Wooldridge - Industry Arbitrator - Panelist & Chair  
G. Maynard Green - Public Arbitrator - Panelist  
Anthony E. Krug - Public Arbitrator - Panelist

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Raymond E. Wooldridge, Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
G. Maynard Green, Panelist

\_\_\_\_\_  
Date

Anthony E. Krug  
Anthony E. Krug, Panelist

Dec. 1, 2003  
Date

12/2/03  
Date of Service (for NASD Dispute Resolution use only)