

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

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In the Matter of the Arbitration Between:

Robert J. Aronson (Claimant) v. Paul A. Peterson and Merrill Lynch, Pierce, Fenner & Smith Incorporated (Respondents)

Case Number: 02-05512

Hearing Site: Rochester, NY

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

**REPRESENTATION OF PARTIES**

Claimant Robert J. Aronson ("Claimant"): Kevin Conway and Fred Van Remortel of Conway & Conway, 1700 Broadway, 31<sup>st</sup> Floor, New York, NY 10019

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Paul A. Peterson ("Peterson") hereinafter collectively referred to as "Respondents": Christian D. Carbone and Bryan I. Reyhani of Loeb & Loeb, 345 Park Ave., New York, NY 10154.

**CASE INFORMATION**

Statement of Claim filed (on or about): September 16, 2002

Claimant Robert J. Aronson's Uniform Submission Agreement signed: September 12, 2002

Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and Paul A. Peterson on or about: February 14, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed: February 28, 2003

Respondent Paul A. Peterson's Uniform Submission Agreement signed: February 28, 2003

**CASE SUMMARY**

Claimant alleged that he was an unsophisticated investor with respect to the options trading he was recommended. Claimant purported to allege causes of action including fraud, conversion, breach of contract, breach of fiduciary duty, negligence and failure to supervise. Claimant's claim involves, but is not limited to, the following stocks: Applied Materials, Global Crossing, JDS Uniphase, Lucent Technologies, Motorola, Oracle, Qualcomm and Texas Instruments.

Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim. Respondents claimed that Mr. Aronson is an experienced and knowledgeable investor who appreciated all of the risks of the investments in his account. Respondents' position was that Mr.

Aronson directed and controlled the account in question and that all of the transactions at issue were unsolicited.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$350,00.00, plus interest, punitive damages and costs, including reasonable attorney's fees.

Respondents requested dismissal with prejudice of Claimant's Statement of Claim, in its entirety, and that the Panel award Respondents attorney's fees and costs. Respondents also requested expungement of this matter from Mr. Peterson's CRD record maintained by the NASD.

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

Prior to the hearing, Respondent Paul A. Peterson was dismissed with prejudice by Claimant.

Prior to the hearing, the Parties fully and finally settled all claims by and between them. Therefore, the Parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

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

1. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Paul A. Peterson's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Peterson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
2. Each party shall bear its own costs, including attorney's fees, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety

**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 = \$ 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(s) at the time of the events giving rise to the dispute. In this matter, the member firm Merrill Lynch, Pierce, Fenner & Smith is a party.

|                            |                      |
|----------------------------|----------------------|
| Member Surcharge           | = \$ 1,700.00        |
| Pre-Hearing Process Fee    | = \$ 750.00          |
| <u>Hearing Process Fee</u> | <u>= \$ 2,750.00</u> |
| Total Member Fees          | = \$ 5,200.00        |

**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:

(1) One Pre-hearing conference with the Panel @ \$1,125.00/session = \$ 1,125.00  
Pre-hearing conference: August 25, 2003 1 session

Total Forum Fees = \$ 1,125.00

1. The Panel has assessed \$375.00 of the forum fees solely against Claimant.
2. The Panel has assessed \$750.00 of the forum fees solely against Merrill Lynch.

**Fee Summary**

1. Claimant is solely liable for:

|                      |                     |
|----------------------|---------------------|
| Initial Filing Fee   | = \$ 300.00         |
| <u>Forum Fees</u>    | <u>= \$ 375.00</u>  |
| Total Fees           | = \$ 675.00         |
| <u>Less payments</u> | <u>= \$1,425.00</u> |
| Refund Due Claimant  | = \$ 750.00         |

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2. Respondent Merrill Lynch is solely liable for:


|   |                    |
|---|--------------------|
| Member Fees                               | = \$5,200.00       |
| Forum Fees                                | = \$ 750.00        |
| <hr/> Total Fees                          | <hr/> = \$5,950.00 |
| Less payments                             | = \$5,200.00       |
| <hr/> Balance Due NASD Dispute Resolution | <hr/> = \$ 750.00  |

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**

  
Bryan M. Reymani  
Loeb & Loeb  
Attorney for Respondents

4/20/04  
Signature Date

  
Fred Van Remortel  
Conway & Conway  
Attorney for Claimant

4/20/04  
Signature Date

**ARBITRATION PANEL**

|                         |   |  |
|-------------------------|---|--|
| Robert Rushowy          | - | Public Arbitrator, Presiding Chairperson |
| Eugene Setel            | - | Public Arbitrator                        |
| James Pasquale Nunciato | - | Non-Public Arbitrator                    |

**Concurring Arbitrators' Signatures**



Robert Rushowy  
Public Arbitrator, Presiding Chairperson

April 22 '04  
Signature Date

Eugene Setel  
Public Arbitrator

Signature Date

James Pasquale Nunciato  
Non-Public Arbitrator

Signature Date

April 23, 2004  
Date of Service

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Robert Rushowy  
Public Arbitrator, Presiding Chairperson



Eugene Setel  
Public Arbitrator

James Pasquale Nunciato  
Non-Public Arbitrator

April 23, 2004  
Date of Service

Signature Date

4/22/04

Signature Date

Signature Date

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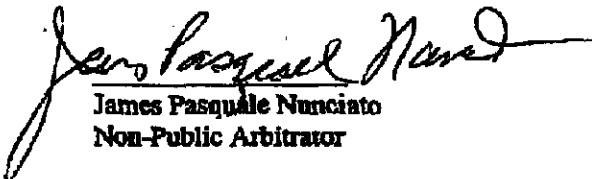
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Public Arbitrator, Presiding Chairperson

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

  
James Pasquale Nunciato  
Non-Public Arbitrator

4/22/04  
Signature Date

April 23, 2004  
Date of Service