

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

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In the Matter of the Arbitration Between:

Susann H. Reef IRA and Thomas Reef Trust, Susann Reef, Trustee (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith Inc., William Palmer, and John Inhouse III (Respondents)

Case Number: 02-06228

Hearing Site: Cleveland, Ohio

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

**REPRESENTATION OF PARTIES**

Claimants Susann H. Reef IRA ("Reef IRA") and Thomas Reef Trust, Susann Reef, Trustee ("Reef Trust") hereinafter referred to as "Claimants": Michael J. Elliot, Esq., Scanlon & Co., LLC, Akron, OH. Previously represented by: Donald Hanzel, Esq., Akron, OH.

Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), John William Palmer ("Palmer"), and John Inhouse III ("Inhouse") hereinafter collectively referred to as "Respondents": Dennise S. Mulvihill, Esq. and Brian F. Amery, Esq., Bressler, Amery & Ross, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about October 17, 2002.

Amended Statement of Claim filed on or about: May 24, 2004.

Claimants signed the Uniform Submission Agreement: October 14, 2002.

Joint Statement of Answer filed by Respondents on or about: January 28, 2003.

Joint Amended Answer filed by Respondents on or about: May 16, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: February 19, 2003;

Respondent Palmer signed the Uniform Submission Agreement: December 17, 2004.

Respondent Inhouse signed the Uniform Submission Agreement: February 20, 2002.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability, unauthorized trading, excessive commissions, failure to supervise from June 1999 through June 2001. Claimants' claims involved shares of common stock.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: The Statement of Claim

fails to state a claim upon which relief can be granted. The Statement of Claim is barred by the doctrines of laches, waiver, ratification and estoppel. Respondents acted in good faith and without malice or reckless indifference to Claimant. Upon information and belief, Claimant has failed to mitigate any alleged damages and therefore her claim for damages is barred or reduced pro tanto. Upon information and belief, Claimant's injuries or damages are due to the acts or omissions of Claimant. Whatever damages, if any, that were sustained by Claimant, as alleged in the Amended Statement of Claim, were caused in whole or in part or were contributed to by Claimant's negligence. Respondents did not breach any duty to Claimant allegedly imposed by operation of law or contract.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amounts of \$443,154.00 and \$24,350.77; commissions and 12b-1 charges; rescission; punitive damages in the amount of \$1,500,000.00; reasonable attorneys' fees, costs, and other expenses incurred; and all other legal or equitable relief as this Panel deemed appropriate.

Respondents requested dismissal of Claimants' claims; that the arbitrators enter an order expunging or striking this claim from Respondents Palmer's and Inhouse's permanent registration records maintained by the CRD; and costs and other relief as they deem just and proper.

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

The Panel granted Respondents' Motion to Disqualify Donald Hanzel as Claimant's attorney.

On or about December 7, 2004, NASD Dispute Resolution was notified that the parties settled this matter. By letter dated December 17, 2004, the parties submitted a Stipulation of Dismissal with Prejudice for the Panel's approval.

On December 17, 2004 the parties filed a stipulated award dismissing with prejudice all claims against John William Palmer and John J. Inhouse, III.

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

### **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 entry of an award, the written stipulation thereto, the Panel hereby grants the motion and enters this award granting the following relief:

- 1) Claimants' claims are dismissed in their entirety.
- 2) Each party shall bear its own costs and expenses, except that Respondents shall bear the cost of obtaining the expungement referenced in paragraph 3 below.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from the registration records of Respondents John J. Inhouse III and John William Palmer 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 J. Inhouse III and John William Palmer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 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 will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$500.00
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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 persons 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	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

##### **Adjournment Fees**

The following adjournment fees are assessed:

December 1-3, 2004, joint adjournment request	= \$1,200.00
Claimants' share	= \$600.00
Respondents' share	= \$600.00

**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:

Four (4) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$4,800.00

Pre-hearing conferences:      May 12, 2003              1 session  
   October 10, 2003          1 session  
   May 19, 2004              1 session  
   November 23, 2004      1 session

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Total Forum Fees = \$4,800.00

1. The Panel has assessed \$2,400.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$2,400.00 of the forum fees against Respondent Merrill Lynch.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 2,400.00</u>
Total Fees	= \$ 3,500.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,925.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$ 2,400.00</u>
Total Fees	= \$10,950.00
<u>Less payments</u>	<u>= \$ 7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,950.00

3. Respondents are jointly and severally liable for:

<u>Adjournment Fee</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**

Susann H. Reef  
Susann Reef IRA  
Thomas Reef Trust, Susann Reef, Trustee  
Claimant

1/11/05  
Signature Date

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

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

\_\_\_\_\_  
William Palmer  
Respondent

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

\_\_\_\_\_  
John Inhouse, III  
Respondent

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

Parties' Signatures

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Susann Reef IRA  
Thomas Reef Trust, Susann Reef, Trustee  
Claimant

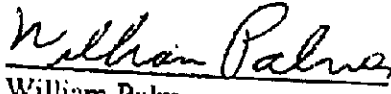
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Signature Date

  
Merrill Lynch Pierce Fenner & Smith, Inc.  
Respondent

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1-10-2005  
Signature Date

  
William Palmer  
Respondent

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1/11/2005  
Signature Date

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John Inhouse, III  
Respondent

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Signature Date

Parties' Signatures

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Susann Reef IRA  
Thomas Reef Trust, Susann Reef, Trustee  
Claimant


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

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

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

\_\_\_\_\_  
William Palmer  
Respondent

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

  
John Inhouse, III  
Respondent

1/18/05  
Signature Date

**ARBITRATION PANEL**

Thomas H. Barnard, Jr., Esq.	-	Public Arbitrator, Presiding Chair
James Dale Ellis, J.D.	-	Public Arbitrator
Kathleen T. Susong	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Thomas H. Barnard, Jr., Esq.  
Public Arbitrator, Presiding Chair

1/6/05  
Signature Date

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James Dale Ellis, J.D.  
Public Arbitrator

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

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Kathleen T. SuSong  
Non-Public Arbitrator

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

January 24, 2005  
Date of Service (For NASD office use only)




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