

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Michael D. Weaver

Case Number: 02-06230

Names of Respondents  
Merrill Lynch, Pierce, Fenner & Smith Inc.,  
Paul A. Pagnato, and David Karp

Hearing Site: Philadelphia, PA

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

**REPRESENTATION OF PARTIES**

Claimant, Michael D. Weaver, hereinafter referred to as "Claimant," was represented by Nicholas J. Guiliano, Esq., The Guiliano Law Firm, P.C., Philadelphia, Pennsylvania.

Respondents, Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), Paul A. Pagnato ("Pagnato") and David Karp ("Karp"), hereinafter collectively referred to as "Respondents," were represented by Elizabeth Hoop Fay, Esq., Paul T. Chryssikos, Esq. and P. Daffodil Tyminski, Esq., Morgan, Lewis & Bockius LLP, Philadelphia, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on October 14, 2002.

Claimant signed the Uniform Submission Agreement on September 26, 2002.

Statement of Answer was filed by Respondents on February 26, 2003.

A representative of Respondent Merrill Lynch signed the Uniform Submission Agreement on December 30, 2002.

Respondent Pagnato signed the Uniform Submission Agreement on February 24, 2003.

Respondent Karp signed the Uniform Submission Agreement on February 24, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: violation of the anti-fraud provisions of the federal securities laws; excessive activity; sale of unsuitable securities; fraudulent use of a margin account; common law fraud; breach of fiduciary duty; and violation of the New Jersey Uniform Securities Act. The causes of action relate to the sale of various bonds and fixed income securities and the purchase of various equities and technology related securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim as a matter of law; statutes of limitations; economic loss doctrine; ratification; waiver; estoppel;

Claimant, acting with full knowledge and notice of the facts, ratified, approved and accepted, acquiesced, and confirmed all transactions in accordance with SRO Rules and Regulations; no material misrepresentation or omissions to Claimant; Respondents breached no statutory or common law duty owed to Claimant; Respondents acted in good faith, and in a commercially reasonable manner; Respondent Merrill Lynch maintained a reasonable system of supervision; assumption of risk; any losses were a result of market forces, contributory or comparative negligence; Claimant failed to allege damages with specificity; and failure to mitigate.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$230,000.00; punitive damages; interest; attorneys' fees; reasonable costs of the suit; and any other relief that is just, fair and equitable.

Respondents requested that the Statement of Claim be dismissed in its entirety; all expenses and forum fees of the action be assessed against Claimant, and that the Panel award Respondents any additional relief it deems appropriate. Respondents further requested the expungement of Respondents Karp and Pagnato's NASD Central Registration Depository Record ("CRD").

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

Prior to the hearing, the Parties fully and finally settled all claims by and among 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 listed parties have amicably resolved their differences and have requested this Stipulated Award;
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Pagnato's and Karp's 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 Pagnato and Karp must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and
4. 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 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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent 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**

Adjournments granted during these proceedings for which fees were assessed:

October 19-21, 2004 adjournment by Respondents = \$ 1,125.00

The Panel assessed the adjournment fees jointly and severally to Respondents.

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

The Panel has assessed forum fees for each session conducted. A 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. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$ 1,125.00	= \$ 1,125.00
Pre-hearing conference: September 10, 2003 1 session	

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Total Forum Fees = \$ 1,125.00

1. The Panel has assessed \$ 562.50 of the forum fees to Claimant.
2. The Panel has assessed \$ 562.50 of the forum fees jointly and severally to Respondents.

**EEE SUMMARY**

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Retained Hearing Session Deposit	= \$ 562.50
Total Fees	= \$ 1,425.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 00.00

2. Respondent Merrill Lynch is assessed and shall pay the following fees:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 00.00

3. Respondents are jointly and severally assessed and shall pay the following fees:

Adjournment Fee	= \$ 1,125.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 1,687.50
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 1,687.50

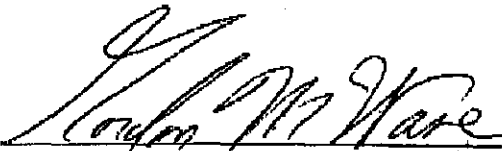
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Gordon M. Wase, Esquire  
Richard F. Bicker, Ph.D.  
Jerry G. Kos

Public Arbitrator, Presiding Chairperson  
Public Arbitrator, Panelist  
Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**



Gordon M. Wase, Esquire  
Public Arbitrator, Presiding Chairperson -

10/4/05  
Signature Date

Richard F. Bicker, Ph.D.  
Public Arbitrator, Panelist

Signature Date

Jerry G. Kos  
Non-Public Arbitrator, Panelist

Signature Date

10/6/05  
Date of Service (For NASD Dispute Resolution office use only)

**Concurring Arbitrators' Signatures**

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Gordon M. Wase, Esquire  
Public Arbitrator, Presiding Chairperson

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

Richard F. Bicker  
Richard F. Bicker, Ph.D.  
Public Arbitrator, Panelist

October 3, 2005  
Signature Date

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Jerry G. Kos  
Non-Public Arbitrator, Panelist

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Signature Date

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

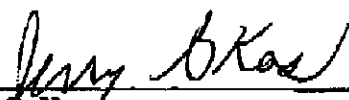
Concurring Arbitrators' Signatures

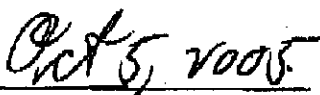
Gordon M. Wase, Esquire  
Public Arbitrator, Presiding Chairperson

Signature Date

Richard F. Bicker, Ph.D.  
Public Arbitrator, Panelist

Signature Date

  
Jerry B. Kos  
Non-Public Arbitrator, Panelist

  
Signature Date