

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

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In the Matter of the Arbitration Between:

Peter A. Tomassi (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kenneth Neuman (Respondents)

Case Number: 02-06726

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Peter A. Tomassi ("Tomassi") hereinafter referred to as "Claimant": Richard C. Fooshee, Esq., Englewood, NJ.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Kenneth Neuman ("Neuman") hereinafter collectively referred to as "Respondents": Lawrence E. Fenster, Esq. and Hugo A. Hilgendorff, Esq., Bressler, Amery & Ross, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: October 25, 2002.

Claimant signed the Uniform Submission Agreement.

Joint Statement of Answer filed by Respondents on or about: January 31, 2003.

Respondent signed the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; breach of contract; negligence; mismanagement of funds; fraud; and failure to supervise. The causes of action relate to unspecified securities.

Unless specifically admitted in its Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$3,294,202.00; interest; costs; attorneys' fees; and other case-related costs.

Respondents requested that Claimant's Statement of Claim be dismissed against all parties with

prejudice; and that the Arbitrators enter an order expunging or striking this claim from Respondent Neuman's permanent registration records maintained by the CRD.

**OTHER ISSUES CONSIDERED AND DECIDED**

On or about August 17, 2004, NASD Dispute Resolution was notified that the parties settled this matter.

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

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

1. Respondent Merrill Lynch is dismissed with prejudice. Claimants and Respondent Merrill Lynch have entered into a confidential settlement agreement.
2. The Panel finds that Claimant's Statement of Claim fails to state a claim against Respondent Kenneth Neuman and therefore recommends the expungement of all reference to the above captioned arbitration from Respondent (Name'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, Respondent Kenneth Neuman must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Respondents shall bear the NASD fees associated with the above-referenced arbitration for both parties.
4. Any and all relief not specifically addressed herein 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 = \$600.00

#### 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 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>	= \$5,000.00
Total Member Fees	= \$8,550.00

#### Adjournment Fees

The following adjournment fees are assessed:

February 25-27, 2004, adjournment request	= \$1,200.00
Claimant's 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:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: July 15, 2003 1 session	
Total Forum Fees	= \$1,200.00

1. The Panel has assessed \$600.00 of the forum fees against Claimant.
2. The Panel has assessed \$600.00 of the forum fees jointly and severally against Respondents.

### Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 600.00

<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$1,800.00
<u>Less payments</u>	= \$1,800.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$8,550.00
Total Fees	= \$8,550.00
<u>Less payments</u>	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$1,200.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,200.00

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**

RICHARD C. FOOSHEE, ESQ.  
Attorney for Claimant Peter A. Tomassi

Richard C. Fooshee

Richard C. Fooshee, Esq.

June 15, 2004

Date

BRESSLER, AMERY & ROSS, P.C.  
Attorneys for Respondents Merrill Lynch,  
Pierce, Fenner & Smith, Inc. and Kenneth  
Neuman

Lawrence E. Fenster

Lawrence E. Fenster, Esq.

8/31/04

Date

ARBITRATION PANEL

Robert M. Goldstein, Esq.	-	Public Arbitrator, Presiding Chair
Fern Sue Reidman, Esq.	-	Public Arbitrator
David W. Haynes	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

I have reviewed the enclosed Stipulated Award and have made a determination to decline signing said award.

1/31/05 ROBERT M. GOLDSTEIN

Robert M. Goldstein, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Fern Sue Reidman, Esq.  
Public Arbitrator

Signature Date

David W. Haynes  
Non-Public Arbitrator

Signature Date

February 15, 2005

Date of Service (For NASD office use only)

ARBITRATION PANEL


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David W. Haynes	-	Non-Public Arbitrator

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Robert M. Goldstein, Esq.  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Fern Sue Reidman, Esq.  
Public Arbitrator

  
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Signature Date

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David W. Haynes  
Non-Public Arbitrator

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Signature Date

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Fern Sue Reidman, Esq.	-	Public Arbitrator
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**Concurring Arbitrators' Signatures**

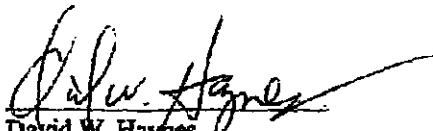
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Robert M. Goldstein, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Fern Sue Reidman, Esq.  
Public Arbitrator

Signature Date

  
David W. Haynes  
Non-Public Arbitrator

2/8/05  
Signature Date

February 15, 2005

Date of Service (For NASD office use only)