

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Terrie Schumann (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Andrew B. Elsoffer (Respondents)

Case Number: 02-07003

Hearing Site: Cleveland, Ohio

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

REPRESENTATION OF PARTIES

Claimant Terrie Schumann ("Schumann") hereinafter referred to as "Claimant": Douglas A. Kutsko, Esq., Brian P. Biggins & Associates Co., L.P.A., Rocky River, OH.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Andrew B. Elsoffer ("Elsoffer") hereinafter collectively referred to as "Respondents": Stephen M. Bales, Esq., Ziegler, Metzger & Miller, LLP, Cleveland, OH.

CASE INFORMATION

Statement of Claim filed on or about: November 14, 2002.
Claimant signed the Uniform Submission Agreement.

Joint Statement of Answer filed by Respondents on or about: February 14, 2003.
Respondent Merrill Lynch signed the Uniform Submission Agreement: December 4, 2002.
Respondent Elsoffer signed the Uniform Submission Agreement: February 7, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: negligence; breach of contract; breach of fiduciary duty; respondeat superior; failure to supervise; and unauthorized trading. Claimant's claim involved unspecified shares of common stock.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages of approximately \$500,000.00; punitive damages plus attorneys' fees (ORC sec. 1343.03); costs and any other remedy the Panel

deems just and equitable.

Respondents requested that an award be entered in their favor and against Schumann, specifically finding that the Respondents have no liability to her with regard to any of the allegations raised in her Statement of Claim; and for such other and further relief that the Panel shall deem to be just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated March 9, 2004, Respondents' counsel advised NASD Dispute Resolution that the parties had entered into a Settlement Agreement and submitted a proposed Stipulated Award for the Panel's approval. These documents are annexed respectively as Exhibits "A" and "B".

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

1. The claims against all Respondents are dismissed with prejudice.
2. The claims against Respondent Elsoffer are found to be without legal merit.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Andrew B. Elsoffer'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 Elsoffer must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
4. Claimant and Respondent Merrill Lynch shall equally share all forum fees.
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEEES

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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

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 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: July 31, 2003 1 session

Total Forum Fees = \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees against Claimant.
2. The Panel has assessed \$562.50 of the forum fees against Respondent Merrill Lynch.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 562.50

Total Fees = \$ 862.50

Less payments = \$1,425.00

Refund Due Claimant = \$ 562.50

2. Respondent Merrill Lynch is solely liable for:

Member Fees = \$5,200.00

Forum Fees = \$ 562.50

Total Fees = \$5,762.50

Less payments = \$5,200.00

Balance Due NASD Dispute Resolution = \$ 562.50

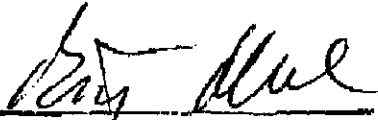
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Benjamin B. Segel, Esq.	-	Public Arbitrator, Presiding Chairperson
Jason C. Blackford, Esq.	-	Public Arbitrator
Robert V. Shepherd	-	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 in which is my award.



Benjamin B. Segel, Esq.
Public Arbitrator, Presiding Chairperson

9/01/04

Signature Date

Jason C. Blackford, Esq.
Public Arbitrator

Signature Date

Robert V. Shepherd
Non-Public Arbitrator

Signature Date

September 2, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Benjamin B. Segel, Esq.	-	Public Arbitrator, Presiding Chairperson
Jason C. Blackford, Esq.	-	Public Arbitrator
Robert V. Shepherd	-	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.

Benjamin B. Segel, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Jason C. Blackford, Esq.
Public Arbitrator

August 19, 2004

Signature Date

Robert V. Shepherd
Non-Public Arbitrator

Signature Date

September 2, 2004
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Benjamin B. Segel, Esq.	-	Public Arbitrator, Presiding Chairperson
Jason C. Blackford, Esq.	-	Public Arbitrator
Robert V. Shepherd	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

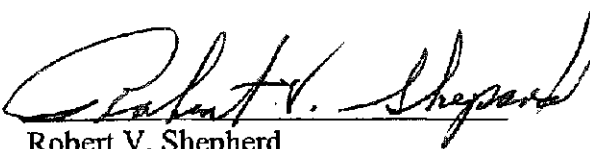
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

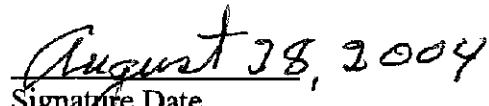
Benjamin B. Segel, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Jason C. Blackford, Esq.
Public Arbitrator

Signature Date


Robert V. Shepherd
Non-Public Arbitrator


Signature Date

September 2, 2004
Date of Service (For NASD Dispute Resolution use only)

EXHIBIT "A"

SETTLEMENT AGREEMENT, STIPULATION
AND CONFIDENTIALITY AGREEMENT

This SETTLEMENT AGREEMENT, STIPULATION AND CONFIDENTIALITY AGREEMENT ("Agreement") is made and entered into by and among Claimant, Terrie S. Schumann ("Schumann"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Andrew B. Elsoffer ("Elsoffer") (Merrill Lynch and Elsoffer are collectively referred to herein as "Respondents"), this 3rd day of March, 2004.

WHEREAS, Claimant maintained three brokerage accounts with Respondents, Account Nos. 617-81T06/646-81F20/617-83E9; 646-16848/617-55294; and 646-17x63/617-55085;

WHEREAS, disputes have arisen between Claimant and Respondents;

WHEREAS, Claimant commenced an NASD Arbitration, Case No. 02-07003 ("Action") against Respondents;

WHEREAS, Claimant and Respondents wish to resolve their dispute prior to the commencement of an arbitration hearing; and,

WHEREAS, all parties stipulate that all claims against Elsoffer are without legal merit.

NOW THEREFORE, in consideration of the promises and amounts contained herein the receipts, adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Merrill Lynch shall pay the sum of \$6,000.00 to Claimant in full satisfaction of claims by Claimant, her heirs, employees, personal representatives, agents, successors and assigns.
2. Claimant consents, in lieu of a hearing, that a Stipulated Award be entered by the NASD Arbitration Panel in Case No. 02-00152. A copy of said Award being attached hereto as

Exhibit "1."

3. Payment as referenced above shall satisfy and extinguish any and all claims, known, unknown, foreseen or unforeseen, patent or latent, by Claimant, her heirs, successors and assigns against Respondents, specifically, but not limited to those claims raised in the Action.

4. Claimant and Respondents do hereby mutually release each other, their respective successors, assigns, employees, insurers and licensees from any and all claims, liabilities, demands, actions or causes of action of any kind or description whatsoever in law or in equity, known or unknown which they may have or believe to have against each other.

5. By execution of this Agreement, the parties make no admissions of fact or law, other than the Stipulated Award.

6. It is understood that this Agreement is a compromise of disputed claims and that the payment and other consideration provided for herein is not to be construed as an admission of liability on the part of any party, and any such admission of liabilities is expressly denied.

7. This document contains the entire understanding of the parties and the same shall not be amended or modified in any way except upon written agreement by the parties. This Agreement shall inure to the benefit of and be binding upon the parties.

8. The parties acknowledge the significance and consequence of such specified intention to release all claims and hereby assume full responsibility for any injuries, damages, losses, or liability that they may hereafter incur from the within dispute.

9. The parties acknowledge that the terms and conditions of the Agreement will not, except as required by law, rule or regulation, be disclosed either directly or indirectly to any person or entity outside of their respective organizations or representatives, except as may be

required by law, or as may be necessary in order for the parties to perform their obligations under this Agreement. The parties further agree to take all steps reasonably necessary to prevent the accidental or negligent disclosure of such confidential information to any unauthorized person. Specifically, the parties to this Agreement, their respective heirs, executors, administrators, successors, assigns, officers, directors, employees, agents, accountants and attorneys shall not disclose to any person and shall keep strictly confidential and secret the following:

- a. The existence, terms and underlying circumstances of this Agreement;
- b. The nature or description of any claims asserted by Claimant against Respondents which are the subject of this Agreement;
- c. All documents and writings of any kind or description, including electronic mail or messages posted on the internet or any other linked computer system, that relate or refer to the confidential information described above, including, without limiting the generality of the foregoing, news releases or statements to any branch of the news media or other groups or individuals.

10. It is understood and agreed that the confidential information and documentation described above may, if necessary, be disclosed in the following circumstances.

- a. The conduct of the essential business of each of the parties to this Agreement;
- b. Where required by law;
- c. As required to enforce the terms of the Agreement and to obtain confirmation from a court of competent jurisdiction of the Stipulated

Award.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The Parties intend that the language of all parts of this Agreement be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties to this Agreement. If a court should declare or determine that any provision of this Agreement is illegal or invalid, then the validity of the remaining part, terms or provisions shall not be affected thereby.

12. The parties acknowledge and represent that this Agreement constitutes a full, final and complete understanding and agreement between and among the parties.

13. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed an original, but all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have set their hands hereto on the day and date first written above.


TERRIE S. SCHUMANN

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED


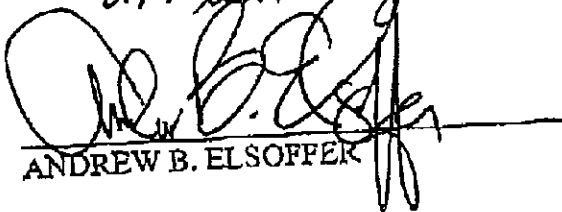
By: 
Title: *V.P. adm mgr.*

ANDREW B. ELISOFFER

EXHIBIT "B"

STEPHEN M. BALES (0003380)
 ZIEGLER, METZGER & MILLER
 925 Euclid Avenue, Suite 2020
 Cleveland, Ohio 44115-1441
 (216) 781-5470

Attorney for Respondents, Andrew B. Elsoffer
 and Merrill Lynch, Pierce, Fenner & Smith, Incorporated

NASD DISPUTE RESOLUTION

In the Matter of the Arbitration Between

NASD-DR Case No. 02-07003

Terrie Schumann

Claimant,

-and-

STIPULATED AWARD

Merrill Lynch, Pierce, Fenner & Smith,
 Incorporated, et al.

Respondents.

AWARD: March ____ 2004

Claimant, Terrie S. Schumann, and Respondents, Andrew B. Elsoffer and Merrill Lynch, Pierce, Fenner & Smith Incorporated, have entered into an agreement to present to the Panel as a Stipulated Award. In lieu of a hearing and upon stipulation of said parties for entry of an Award, the Panel hereby adopts the stipulation and enters the following award:

1. The claims against all Respondents are dismissed with prejudice.
2. The claims against Andrew B. Elsoffer are found to be without legal merit.
3. The Panel recommends the expungement of all reference to this arbitration from Respondent Andrew B. Elsoffer's registration records maintained by the NASD Central Registration Depository ("CRD"). This recommendation is made with

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MERRILL LYNCH

the understanding that, pursuant to NASD Notice 99-09, Respondent Elsoffer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

4. Claimant, Terrie S. Schumann and Merrill Lynch, Pierce, Fenner & Smith Incorporated shall equally share all forum fees.

ARBITRATORS

Signature

Signature

Signature

Date

Date

Date

Approved by:

CLAIMANT

TERRIE S. SCHUMANN

RESPONDENTS

MERRILL LYNCH, PIERCE,
FENNER & SMITH INCORPORATED

By:

Title:

ANDREW B. ELISOFFER

the understanding that, pursuant to NASD Notice 99-09, Respondent Elsoffer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

4. Claimant, Terrie S. Schumann and Merrill Lynch, Pierce, Fenner & Smith Incorporated shall equally share all forum fees.

ARBITRATORS:

Signature

Date

Signature

Date

Signature

Date

Approved by:

CLAIMANT

TERRIE S. SCHUMANN

RESPONDENTS

MERRILL LYNCH, PIERCE,
FENNER & SMITH INCORPORATED

By:

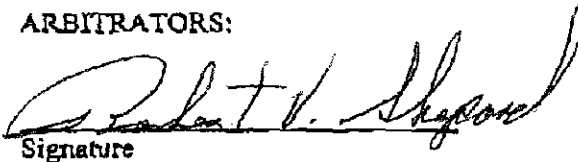
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ANDREW B. ELISOFFER

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4. Claimant, Terrie S. Schumann and Merrill Lynch, Pierce, Fenner & Smith Incorporated shall equally share all forum fees.

ARBITRATORS:


Signature

8/28/04
Date

Signature

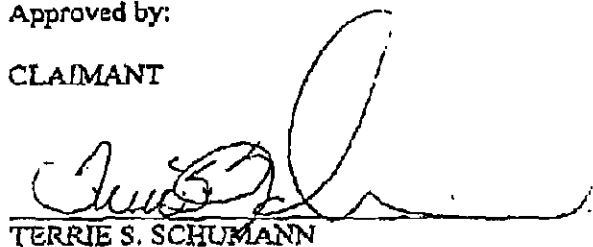
Date

Signature

Date

Approved by:

CLAIMANT


TERRIE S. SCHUMANN

RESPONDENTS

MERRILL LYNCH, PIERCE,
FENNER & SMITH INCORPORATED

By: Title: V.P. Legal Counsel


ANDREW B. ELISOFFER