

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

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In the Matter of the Arbitration Between:

John Terry Austin and Jana Dee Austin, Trustees of the Austin Living Trust and Cove Enterprises LLC, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Ronald P. Perry, and Robert A. Connor, Respondents

Case Number: 02-07313

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

Jonathan A. Michaels, Esq.  
Burkhalter, Michaels, Kessler & George LLP  
Irvine, California

For Respondents:

Eric J. Glassman, Esq.  
Mennemeier, Glassman & Stroud LLP  
Sacramento, California

**CASE INFORMATION**

Statement of Claim filed: November 25, 2002

Claimants Uniform Submission Agreements each signed: November 8, 2002

Joint Statement of Answer filed by Respondents: February 19, 2003

Respondents Uniform Submission Agreement each signed: March 14, 2003

**CASE SUMMARY**

Claimants alleged breach of fiduciary duty, unsuitability, negligence, and failure to supervise. Claimants allegations concerned Respondents' alleged advice to purchase stock in Global Telesys, Inc. stock and to invest \$1 million of Claimants' money in Credit Suisse Consults Account, Franklin Management Consults Account, Calamos Asset Management, Regent Asset Management and TCW Management.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and raised various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested an unspecified compensatory damages, interest, punitive damages, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, expungement of all reference to the above captioned arbitration from Respondents Ronald P. Perry's and Robert A. Connor's registration records maintained by the NASD Central Registration Depository (CRD), and costs, including attorney's fees.

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

On January 16, 2003, Claimant John Terry Austin and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On May 12, 2003, Respondents' counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On June 11, 2004, the Parties entered into a Stipulation Requesting an Order Recommending Expungement of this Matter from Respondents Ronald P. Perry's and Robert A. Connor's CRD records.

On September 30, 2004, after one of the arbitrators withdrew from the case, the parties agreed that two arbitrators, instead of three, should decide on whether or not to sign the Stipulated Award.

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

**AWARD**

After considering the pleadings and the Parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants and Respondents have entered into a confidential settlement agreement.
2. Claimants' claims are dismissed with prejudice in their entirety.
3. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondents Ronald P. Perry's and Robert A. Connor's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Ronald P. Perry and Robert A. Connor's must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The parties shall bear their respective costs, including attorney's fees.
5. All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,200.00
<b>Total Member Fees</b>	<b>= \$ 4,450.00</b>

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#### **Adjournment Fees**

The following adjournment fees are assessed:

November 3-7, 2003, adjournment requested by the Parties  
Adjournment fee waived by the Panel

June 21-25, 2004, adjournment requested by the Parties  
Adjournment fee waived by the Panel

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the Parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$ 1,000.00/session	= \$1,000.00
Pre-hearing conference: May 1, 2003 1 session	
<b>Total Forum Fees</b>	<b>= \$1,000.00</b>

1. The Panel assessed \$500.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$500.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 500.00
Total Fees	= \$ 750.00
Less payments	= \$(1,425.00)
<b>Refund Due from NASD Dispute Resolution</b>	<b>= \$ (675.00)</b>

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
Less payments	= \$(4,450.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Ronald R. Perry, and Robert A. Connor are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 500.00
Less payments	= \$ (0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 500.00</b>

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

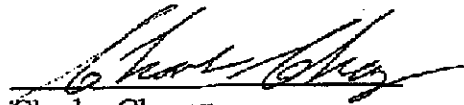
ARBITRATION PANEL

*Charles Chazen*  
*James A. Bush, Esq.*

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*Public Arbitrator, Presiding Chair*  
*Non-Public Arbitrator*

  
Charles Chazen  
Chair, Public Arbitrator

10/20/04  
Signature Date

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James A. Bush, Esq.  
Non-Public Arbitrator

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Signature Date

10/21/04  
Date of Service

**ARBITRATION PANEL**

*Charles Chazen*  
*James A. Bush, Esq.*

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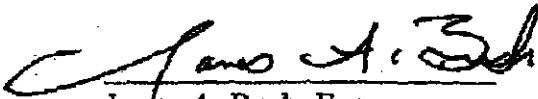
*Public Arbitrator, Presiding Chair*  
*Non-Public Arbitrator*

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Charles Chazen  
Chair, Public Arbitrator

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Signature Date

  
James A. Bush, Esq.  
Non-Public Arbitrator

10/19/04  
Signature Date

10/21/04  
Date of Service