

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

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In the Matter of the Arbitration Between:

Names of the Claimants

Luisa Esmeralda Tosta  
German Tosta

Case Number: 02-07681

Names of the Respondents

Donaldson Lufkin Jenrette  
Securities Corporation, an  
affiliate of Credit Suisse  
First Boston Corporation  
Fernando Lamas

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Luisa Esmeralda Tosta and German Tosta ("Tostas"), hereinafter referred to as "Claimants": Robert Wayne Pearce, Esq., Law Offices of Robert Wayne Pearce, P.A., Boca Raton, Florida.

For Donaldson Lufkin & Jenrette Securities Corporation ("DLJ") and Fernando Lamas ("Lamas"), hereinafter referred to as "Respondents": Keith Olin, Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: December 19, 2002.

Claimants signed the Uniform Submission Agreement: August 1, 2003.

Statement of Answer filed by Respondents on or about: March 26, 2003.

Respondent DLJ signed the Uniform Submission Agreement: April 8, 2003.

Respondent Lamas signed the Uniform Submission Agreement: April 21, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) breach of contract; 3) negligence; 4) violation of Florida Statutes, Section 517.301 through recommending investments that were unsuitable in light of Claimants' investment objectives; and 5) violation of Florida securities laws and common law. Further, Claimants alleged they suffered losses based upon Respondents' recommendations. The causes of action relate to Claimants' investments in public offerings in unspecified companies, and purchases made on margin.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the

Statement of Claim and asserted various defenses. Additionally, Respondents contended that any losses incurred by Claimants resulted from their own decisions. Consequently, Respondents alleged that Claimants were barred from recovery because they ratified all the transactions and controlled the investment decisions in their accounts.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$260,000.00, plus interest, punitive damages, attorney's fees pursuant to Section 57.105, Florida Statutes, the costs of this proceeding and such other relief the arbitration panel deemed just and proper.

Respondents requested that all the Statement of Claim be dismissed in its entirety with prejudice.

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

On or about February 6, 2004, Claimants advised NASD Dispute Resolution that the parties had settled this matter and requested cancellation of the hearings.

On or about March 24, 2004, Respondents filed with NASD a Notice of Filing Stipulated Award and a proposed Stipulated Award requesting expungement of this matter from the NASD Central Registration Depository ("CRD") registration records of Respondent Lamas.

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

### **AWARD**

After considering the pleadings, the Notice of Filing Stipulated Award and the proposed Stipulated Award, the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statment of Claim is dismissed in its entirety without any findings of fault or liability on the part of Respondents DLJ and Lamas.
2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Lamas' registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Lamas must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Each party shall bear its respective costs, including attorneys' fees.
4. Any and all claims for relief not specifically addressed herein are denied with prejudice.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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, Respondent DLJ is a member firm and a party.

|                         |              |
|-------------------------|--------------|
| Member surcharge        | = \$1,700.00 |
| Pre-hearing process fee | = \$ 750.00  |
| Hearing process fee     | = \$2,750.00 |

#### **Adjournment Fees**

No adjournments were granted during these proceedings for which fees were assessed.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during these proceedings.

#### **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:

|  |              |
|--|--------------|
| Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00 | = \$1,350.00 |
| Pre-hearing conferences: September 25, 2003                        | 1 session    |
| December 23, 2003  | 1 session    |
| January 27, 2004   | 1 session    |
| One (1) Pre-hearing session with the Panel @ \$1,125.00            | = \$1,125.00 |
| Pre-hearing conference: July 24, 2003                              | 1 session    |
| Total Forum Fees   | = \$2,475.00 |

The Panel has assessed the total forum fees of \$2,475.00 to Respondent Lamas.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

### **Fee Summary**

Claimants are jointly and severally liable for:

|  |                     |
|--|---------------------|
| Initial Filing Fee                           | = \$ 300.00         |
| Retained Hearing Session Deposit             | = \$1,125.00        |
| <u>pursuant to Rule 10332(f) of the Code</u> |                     |
| Total Fees                                   | = \$1,425.00        |
| <u>Less payments</u>                         | <u>= \$1,425.00</u> |
| Balance Due NASD Dispute Resolution          | = \$ 0.00           |

Respondent DLJ is solely liable for:

|                                     |                     |
|-------------------------------------|---------------------|
| <u>Member Fees</u>                  | <u>= \$5,200.00</u> |
| Total Fees                          | = \$5,200.00        |
| <u>Less payments</u>                | <u>= \$5,200.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 0.00           |

Respondent Lamas is solely liable for:

|                                     |                     |
|-------------------------------------|---------------------|
| <u>Forum Fees</u>                   | <u>= \$2,475.00</u> |
| Total Fees                          | = \$2,475.00        |
| <u>Less payments</u>                | <u>= \$ 0.00</u>    |
| Balance Due NASD Dispute Resolution | = \$2,475.00        |

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

### **ARBITRATION PANEL**

|                                |   |   |
|--------------------------------|---|---|
| <i>Michael E. Schmidt, CFA</i> | - | <i>Public Arbitrator, Presiding Chairperson</i> |
| <i>Elliot Leitner</i>          | - | <i>Public Arbitrator</i>                        |
| <i>Steven Weinberger, Esq.</i> | - | <i>Non-Public Arbitrator</i>                    |

### **Concurring Arbitrators' Signatures**

                  /s/                    
Michael E. Schmidt, CFA  
Public Arbitrator, Presiding Chairperson

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

/s/  
 Elliot Leitner  
 Public Arbitrator

Signature Date

/s/s  
Steven Weinberger, Esq.  
Non-Public Arbitrator

Signature Date

July 22, 2004

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

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### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

### Fee Summary

Claimants are jointly and severally liable for:

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|--|--------------|
| Initial Filing Fee                           | = \$ 300.00  |
| Retained Hearing Session Deposit             | = \$1,125.00 |
| <u>pursuant to Rule 10332(f) of the Code</u> |              |
| Total Fees                                   | = \$1,425.00 |
| <u>Less payments</u>                         | = \$1,425.00 |
| Balance Due NASD Dispute Resolution          | = \$ 0.00    |

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|                                     |              |
|-------------------------------------|--------------|
| <u>Member Fees</u>                  | = \$5,200.00 |
| Total Fees                          | = \$5,200.00 |
| <u>Less payments</u>                | = \$5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00    |

Respondent Lamas is solely liable for:

|                                     |              |
|-------------------------------------|--------------|
| <u>Forum Fees</u>                   | = \$2,475.00 |
| Total Fees                          | = \$2,475.00 |
| <u>Less payments</u>                | = \$ 0.00    |
| Balance Due NASD Dispute Resolution | = \$2,475.00 |

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

### ARBITRATION PANEL

|                         |   |  |
|-------------------------|---|--|
| Michael E. Schmidt, CFA | - | Public Arbitrator, Presiding Chairperson |
| Elliot Leitner          | - | Public Arbitrator                        |
| Steven Weinberger, Esq. | - | Non-Public Arbitrator                    |

### Concurring Arbitrators' Signatures

Michael E. Schmidt, CFA  
Public Arbitrator, Presiding Chairperson

  
Signature Date

  
\_\_\_\_\_  
Elliot Leitner  
Public Arbitrator

7/19/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Steven Weinberger, Esq.  
Non-Public Arbitrator

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

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


02-07681

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No. 2680 P. 6

\_\_\_\_\_  
Elliot Leimer  
Public Arbitrator

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

  
\_\_\_\_\_  
Steven Weinberger, Esq.  
Non-Public Arbitrator

7/21/04  
\_\_\_\_\_  
Signature Date

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