

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

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In the Matter of the Arbitration Between:

Jan Green, John Toroni JTWROS, and Bertram Green Dec'd IRA FBO Jan Green as Beneficiary, (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Dale Koblenzer, and John J. Inhouse, III, (Respondents)

Case Number: 03-00215

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants, Jan Green, John Toroni JTWROS ("J. Green, J. Toroni JTWROS") and Bertram Green Dec'd IRA FBO Jan Green as Beneficiary ("B. Green IRA") hereinafter collectively referred to as "Claimants": John T. McGuire, John T. McGuire and Associates, P.C., New York, NY.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Dale Koblenzer ("Koblenzer"), and John J. Inhouse, III ("Inhouse") hereinafter collectively referred to as "Respondents": John R. Snyder, Esq. and Elizabeth Ybarra Crean, Esq., Bingham McCutchen LLP, Boston, MA.

**CASE INFORMATION**

Statement of Claim filed by Claimants:	January 7, 2003
Claimants Jan Green and John Toroni signed the Uniform Submission Agreement:	January 31, 2003
Joint Answer filed by Respondents:	May 8, 2003
Respondent Merrill Lynch signed the Uniform Submission Agreement:	May 7, 2003
Respondent Koblenzer signed the Uniform Submission Agreement:	July 7, 2003
Respondent Inhouse signed the Uniform Submission Agreement:	July 11, 2003

### **CASE SUMMARY**

Claimants asserted the following causes of action against all Respondents: fraud, securities, fraud, breach of fiduciary duty, negligence, and breach of contract. Claimants asserted a claim for failure to supervise against Respondents Inhouse and Merrill Lynch. Claimants' claim involved common stock, including but not limited to, Vitesse Semiconductor, Conexant Systems, At Home Corp., Priceline.com, Global Crsosing, China.com, Infonet, CMGI, 724 Solutions, WorldCom, and Exodus Communications.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants fail to state any claim upon which relief could be granted; Claimants suffered no damages as a result of the acts of Respondents; Claimants failed to mitigate damages by refusing to sell stock positions; Claimants assumed the risk of these transactions, Claimants' alleged losses were proximately caused by their contributory negligence; Claimants' claims are barred by applicable statutes of limitations; Claimants' alleged claims are barred by the defenses of estoppel, waiver, and laches; Respondents acted properly and in good faith with respect to Claimants' accounts; all risks inherent in the investments and strategies at issue were fully disclosed and/or known to Claimants; and Claimants are not entitled to an award of attorneys' fees, punitive damages, interest or costs of this proceeding.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of approximately \$550,000.00, plus interest from the date the losses were incurred to the date of the Arbitration hearing; punitive damages; and attorneys' fees and costs; and any other damages the Panel may deem just and fair.

Respondents requested dismissal of the Claimants' claims in their entirety.

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

On or about June 8, 2004, Claimants withdrew and dismissed, with prejudice, all of their claims against Respondents Dale Koblenzer and John J. Inhouse, III.

In furtherance of the parties' resolution of this matter, Respondents seek an Order recommending expungement of all reference to these proceedings in the CRD registration records of Respondents Dale Koblenzer and John J. Inhouse, III.

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

1. The parties have agreed to settle this matter for a sum certain to be paid by Respondent Merrill Lynch Pierce, Fenner & Smith Inc.;
2. Claimants' claims are hereby dismissed in their entirety with prejudice, and all other requests for relief are denied;
3. All parties are to bear their own attorneys' fees and costs;
4. The Statement of Claim does not allege that Respondent Inhouse was involved in any investment-related sales practice violation;
5. Claimants have withdrawn and dismissed their claims against Respondents Koblenzer and Inhouse individually;
6. Expungement of reference to these proceedings and the settlement from the registration records of Dale Koblenzer maintained by the NASD Central Registration Depository ("CRD") would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements;
7. Expungement of reference to these proceedings and the settlement from the registration records of John J. Inhouse, III, maintained by the NASD Central Registration Depository ("CRD") would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements;
8. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Dale Koblenzer'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 Koblenzer must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
9. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent John J. Inhouse, III'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 Inhouse must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

10. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$375.00
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#### **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 persons at the time of the events giving rise to the dispute. In this matter, Merrill Lynch, Pierce, Fenner & Smith a party.

Member Surcharge	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$4,000.00</u>
Total Member Fees	= \$7,000.00

#### **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
<u>Pre-hearing conference: January 14, 2004</u>	<u>1 session</u>
Total Forum Fees	= \$1,200.00

1. The Panel has assessed \$600.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$600.00 of the forum fees jointly and severally against Respondent Merrill Lynch.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 975.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Refund Due Claimants	= \$ 600.00

2. Respondent Merrill Lynch is solely liable for:

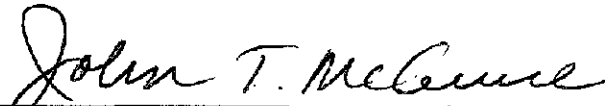
Member Fees	= \$7,000.00
<u>Forum Fees</u>	<u>= \$ 600.00</u>
Total Fees	= \$7,600.00
<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**

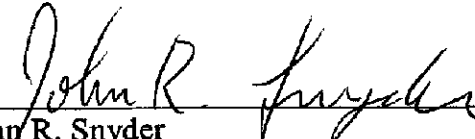
By and through their undersigned counsel, the parties stipulate to entry of this Stipulated Award.

Jan Green, John Toroni JTWROS, and  
Bertram Green Dec'd IRA FBO Jan  
Green as Beneficiary,  
By their attorneys,

  
\_\_\_\_\_  
John T. McGuire  
John T. McGuire and Associates, P.C.  
67 Wall Street, Suite 2001  
New York, NY 10005  
212-425-6562

Dated: 7/6, 2004

Merrill Lynch, Pierce, Fenner & Smith  
Inc., Dale Koblenzer, and John J.  
Inhouse III,  
By their attorneys,

  
\_\_\_\_\_  
John R. Snyder  
Elizabeth Ybarra Crean  
Bingham McCutchen LLP  
150 Federal Street  
Boston, MA 02110  
617-951-8000

Dated: July 1, 2004

**ARBITRATION PANEL**

Jack Friedman, Esq.

Public Arbitrator, Presiding Chair

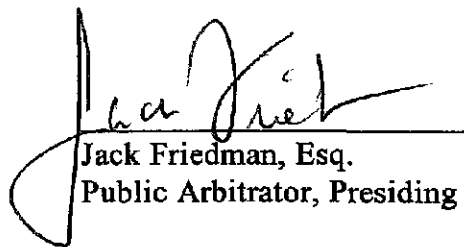
James W. Geiger

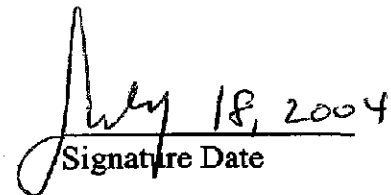
Public Arbitrator

Romaine L. Gardner, Esq.

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Jack Friedman, Esq.  
Public Arbitrator, Presiding Chair

  
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Signature Date

\_\_\_\_\_  
James W. Geiger  
Public Arbitrator

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Signature Date

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Romaine L. Gardner, Esq.  
Non-Public Arbitrator

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Signature Date

July 27, 2004  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
 Arbitration No. 03-00215  
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James W. Geiger

Romaine L. Gardner, Esq.

Public Arbitrator, Presiding Chair

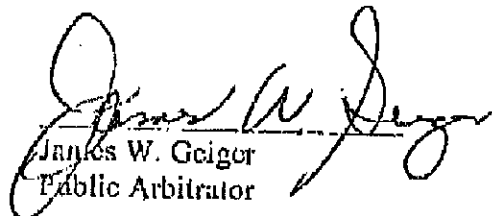
Public Arbitrator

Non-Public Arbitrator

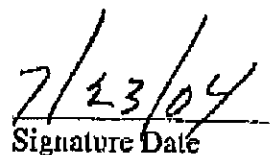
### Concurring Arbitrators' Signatures

Jack Friedman, Esq.

Public Arbitrator, Presiding Chair

  
 James W. Geiger  
 Public Arbitrator

Signature Date

  
 7/23/04  
 Signature Date

Romaine L. Gardner, Esq.  
 Non-Public Arbitrator

Signature Date

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Jack Friedman, Esq.	Public Arbitrator, Presiding Chair
James W. Geiger	Public Arbitrator
Romaine L. Gardner, Esq.	Non-Public Arbitrator

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\_\_\_\_\_  
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Public Arbitrator, Presiding Chair

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Signature Date

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Signature Date

  
Romaine L. Gardner, Esq.  
Non-Public Arbitrator

7/20/04  
Signature Date

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