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

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In the Matter of the Arbitration Between:

Names of the Claimants

Edwin Flatte  
Michele Flatte

Case Number: 03-00431

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith  
Lawrence Tentarelli

Hearing Site: Boca Raton, FL

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

**REPRESENTATION OF PARTIES**

For Edwin Flatte and Michele Flatte, hereinafter collectively referred to as "Claimants": Alan J. Foxman, Esq., The Law Offices of Alan J. Foxman, P.A., Boca Raton, FL.

For Merrill Lynch, Pierce, Fenner & Smith ("MLPFS") and Lawrence Tentarelli ("Tentarelli"), hereinafter collectively referred to as "Respondents": Neil S. Baritz, Esq., Baritz & Colman LLP, Boca Raton, FL.

**CASE INFORMATION**

Statement of Claim filed on or about: January 17, 2003.

Claimant Edwin Flatte signed the Uniform Submission Agreement: November 19, 2002.

Claimant Michele Flatte signed the Uniform Submission Agreement: November 24, 2002.

Answer to Statement of Claim filed by Respondents on or about: May 15, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: April 3, 2003.

Respondent Tentarelli signed the Uniform Submission Agreement: May 22, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; unsuitability; fraud; misrepresentation; negligence; and, failure to supervise. The causes of action relate to the purchase of numerous securities in Claimants' accounts including: Cisco, EMC Corp., Intel, Nortel, Sun Microsystems, Blackrock Microcap Fund, Dreyfus Premier Technology Growth Fund, Putnam International Growth Fund, AIM Constellation Fund, AIM Value Fund, and Thornburg Value Fund.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages of between \$100,000.00 and \$500,000.00, interest,

costs, and attorneys' fees.

Respondents requested dismissal of the Statement of Claim and costs.

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

The parties resolved the issues presented in July 2004. As part of the resolution, Claimants agreed to dismiss all claims against Respondent Tentarelli individually and that the claims were being settled against Respondent MLPFS. Claimants further agreed to cooperate with Respondent Tentarelli's efforts to have this matter expunged from Respondent Tentarelli's registration records maintained by the NASD Central Registration Depository ("CRD"). In connection with the resolution of the claims, the parties agreed that upon the satisfaction of the terms of the resolution, that each of the Claimants and Respondents shall be barred from bringing any action based on or including the claims for which this action has been or could have been brought and that this matter be dismissed, with prejudice, as to all Respondents. The parties further agreed that each party shall bear their own attorneys' fees and expenses relating to this arbitration, the expungement proceedings, and all other matters between the parties. The only issue presented to the undersigned arbitrators (the "Panel") was a proposed Stipulated Award relating to expungement ("Proposed Stipulated Award").

On or about July 15, 2004, Claimants dismissed their claims against Respondent Tentarelli, with prejudice.

On or about August 10, 2004, Claimants dismissed their claims against Respondent MLPFS, with prejudice.

When this case was paneled, Arbitrator Lambert was properly classified as a Non-Public Arbitrator and appointed as such. His classification has since changed to Public Arbitrator.

The parties agreed that the 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 Proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' withdrawal of claims is accepted and Respondents are dismissed from this matter, with prejudice.

The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Lawrence Tentarelli's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Lawrence Tentarelli must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MLPFS is a member firm and a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Total Member Fees = \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

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

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No hearing on the merits was postponed or settled within three business days before the start of a scheduled hearing session.

#### **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 assessed 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: October 1, 2003 1 session

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Total Forum Fees = \$1,125.00

The Panel has assessed \$562.50 of the forum fees jointly and severally to Claimants.  
The Panel has assessed \$562.50 of the forum fees jointly and severally to Respondents.

**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 this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Retained Hearing Session Deposit	= \$ 562.50
Forum Fees	= \$ 562.50
Total Fees	= \$ 1,425.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,425.00

Respondent MLPFS is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less payments	= \$ 0.00
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**

Richard S. Zaifert, Esq.	-	Public Arbitrator, Presiding Chairperson
Michael Lukasievich, Esq.	-	Public Arbitrator
George D. Lambert, III	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Richard S. Zaifert, Esq.  
Public Arbitrator, Presiding Chairperson

                      
Signature Date

/s/  
Michael Lukasievich, Esq.  
Public Arbitrator

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

/s/  
George D. Lambert, III  
Public Arbitrator

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

November 12, 2004  
Date of Service (For NASD Dispute Resolution office use only)

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Arbitration No. 03-00431  
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Claimants are jointly and severally liable for:

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Total Fees	= \$ 1,425.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,425.00

Respondent MLPPS 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

Respondents are jointly and severally liable for:

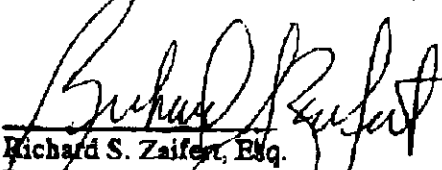
<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 562.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

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


ARBITRATION PANEL

Richard S. Zaifert, Esq.	-	Public Arbitrator, Presiding Chairperson
Michael Lukasievich, Esq.	-	Public Arbitrator
George D. Lambert, III	-	Public Arbitrator

Concurring Arbitrators' Signatures

  
Richard S. Zaifert, Esq.  
Public Arbitrator, Presiding Chairperson

11/09/04  
Signature Date

  
\_\_\_\_\_  
Michael Lukasievich, Esq.  
Public Arbitrator

11/5/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
George D. Lambert, III  
Public Arbitrator

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

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

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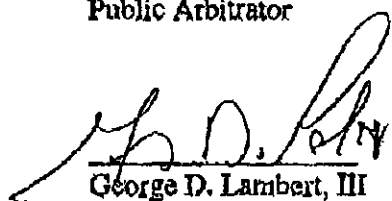
NASD Dispute Resolution

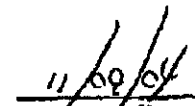
Arbitration No. 03-00431

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Michael Lukasevich, Esq.  
Public Arbitrator

Signature Date

  
George D. Lambert, III  
Public Arbitrator

  
Signature Date

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