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

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In the Matter of the Arbitration Between:

Names of the Claimants

Diane Morris Davidson f/k/a Diane Morris Dunson  
Diane Davidson and Gene Davidson  
Dunson Family Trust

Case Number: 03-00459

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Dearl L. Hemphill

Hearing Site: Tampa, Florida

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

**REPRESENTATION OF PARTIES**

For Diane Morris Davidson f/k/a Diane Morris Dunson, Diane Davidson and Gene Davidson, and Dunson Family Trust, hereinafter collectively referred to as "Claimants": Edward W. Dougherty, Jr., Esq. and Thompkins W. White, Esq., Igler & Dougherty, P.A., Tallahassee, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Dearl L. Hemphill ("Hemphill"), hereinafter collectively referred to as "Respondents": Neil S. Baritz, Esq. and Craig R. Glasser, Esq., Baritz and Coleman LLP, Boca Raton, Florida.

**CASE INFORMATION**

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

Claimants signed the Uniform Submission Agreement: February 7, 2003.

Statement of Answer filed by Respondents on or about: April 21, 2003.

Respondent Hemphill signed the Uniform Submission Agreement: May 14, 2003.

Notice of Partial Withdrawal of Claim filed by Claimants on or about: March 19, 2004.

Respondent MLPFS did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) breach of contract; 2) breach of fiduciary duties; 3) violation of § 517.301 of Florida Statutes; 4) negligence; and 5) gross negligence. The causes of action relate to the purchase and sale of various stocks in Claimants' accounts, including, but not limited to MCI/WorldCom,

Sun, FirePond, Nextel, Applied MicroCircuits, Sandisk Corp., Nokia Corp., WebMD, Medical Manager, JDS Uniphase, and Cybercare.

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: 1) compensatory damages in the amount of \$92,859.00; 2) punitive damages in the amount of \$92,859.00; 3) costs; and 4) a determination that Claimants are the prevailing parties for a later determination of entitlement to attorneys' fees.

Respondents requested: 1) dismissal of the Statement of Claim in its entirety; 2) costs; 3) attorneys' fees; 4) such other relief the undersigned arbitrators (the "Panel") deemed just and proper; and 5) expungement of all references to the above-captioned arbitration from Respondent Hemphill's registration records maintained by the NASD Central Registration Depository ("CRD").

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

On or about March 19, 2004, Claimants filed their Notice of Partial Withdrawal of Claim. Claimants withdrew the joint account of Diane Davidson and Gene Davidson as a Claimant in the above-referenced arbitration proceeding.

On or about April 8, 2004, the parties informed NASD Dispute Resolution that they had reached a settlement of all claims by and between them.

On or about April 28, 2004, the parties filed their request for the entry of a Stipulated Award.

Respondent MLPFS did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

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

### **STIPULATED AWARD**

After considering the pleadings, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' withdrawal of claims is accepted and Respondents are dismissed from this matter with prejudice.
2. The Panel recommends the expungement of all references to the above-captioned arbitration from

Respondent Hemphill's registration records maintained by the NASD CRD with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Hemphill must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **FEES**

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
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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 person at the time of the events giving rise to the dispute. Accordingly, MLPFS is a party to this dispute and was a member of NASD at the time the following fees were assessed:

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

#### **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 this proceeding.

#### **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 the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: November 18, 2003	1 session

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Total Forum Fees	= \$1,125.00
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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
Forum Fees	= \$ 562.50
<u>Retained Hearing Session Deposit Pursuant to Rule 10332(f) of the Code</u>	<u>= \$ 562.50</u>
Total Fees	= \$1,425.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

<u>Member Fees</u>	<u>= \$5,200.00</u>
Total Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$3,550.00</u>
Balance Due NASD Dispute Resolution	= \$1,650.00

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.

**Parties' Signatures**

/s/  
Edward W. Dougherty, Jr., Esq.  
Thompkins W. White, Esq.  
Counsel for Claimants

July 9, 2004  
Signature Date

\_\_\_\_\_  
/s/  
Neil S. Baritz, Esq.  
Craig R. Glasser, Esq.  
Counsel for Respondents

\_\_\_\_\_  
June 23, 2004  
Signature Date

**ARBITRATION PANEL**

William S. Glickfield, Esq.	-	Public Arbitrator, Presiding Chairperson
Stan West	-	Public Arbitrator
Worth T. Blackwell, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
/s/  
William S. Glickfield, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
July 12, 2004  
Signature Date

\_\_\_\_\_  
/s/  
Stan West  
Public Arbitrator

\_\_\_\_\_  
July 24, 2004  
Signature Date

\_\_\_\_\_  
/s/  
Worth T. Blackwell, Esq.  
Non-Public Arbitrator

\_\_\_\_\_  
July 19, 2004  
Signature Date

July 29, 2004  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

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.

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

Respondent MLPFS is solely liable for:

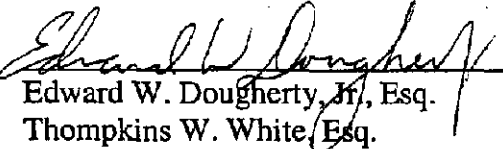
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Respondents are jointly and severally liable for:

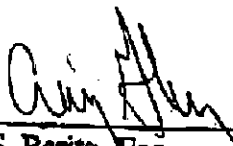
<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 562.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

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

**Parties' Signatures**

  
Edward W. Dougherty, Jr., Esq.  
Thompkins W. White, Esq.  
Counsel for Claimants

7/9/04  
Signature Date



Neil S. Baritz, Esq.  
Craig R. Glasser, Esq.  
Counsel for Respondents

6/23/04  
Signature Date

**ARBITRATION PANEL**

William S. Glickfield, Esq.  
Stan West  
Worth T. Blackwell, Esq.

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
William S. Glickfield, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Stan West  
Public Arbitrator

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

\_\_\_\_\_  
Worth T. Blackwell, Esq.  
Non-Public Arbitrator

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

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

/s/

Neil S. Baritz, Esq.  
Craig R. Glasser, Esq.  
Counsel for Respondents


June 23, 2004  
Signature Date

**ARBITRATION PANEL**

William S. Glickfield, Esq.  
Stan West  
Worth T. Blackwell, Esq.

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
William S. Glickfield, Esq.  
Public Arbitrator, Presiding Chairperson

7-12-04  
Signature Date

Stan West  
Public Arbitrator

Signature Date

Worth T. Blackwell, Esq.  
Non-Public Arbitrator

Signature Date

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



NASD Dispute Resolution  
Arbitration No. 03-00459  
Stipulated Award Page 5

/s/

Neil S. Baritz, Esq.  
Craig R. Glasser, Esq.  
Counsel for Respondents

June 23, 2004

Signature Date

**ARBITRATION PANEL**

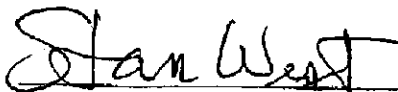
William S. Glickfield, Esq.  
Stan West  
Worth T. Blackwell, Esq.

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

William S. Glickfield, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

  
Stan West  
Public Arbitrator

July 24, 2004  
Signature Date

Worth T. Blackwell, Esq.  
Non-Public Arbitrator

Signature Date

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

/s/

Neil S. Baritz, Esq.  
Craig R. Glasser, Esq.  
Counsel for Respondents

June 23, 2004  
Signature Date

**ARBITRATION PANEL**

William S. Glickfield, Esq.  
Stan West  
Worth T. Blackwell, Esq.

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

William S. Glickfield, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Stan West  
Public Arbitrator

Signature Date



Worth T. Blackwell, Esq.  
Non-Public Arbitrator

7-19-04  
Signature Date

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