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

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In the Matter of the Arbitration Between:

Names of the Claimants

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Mark E. Imbertson

Case Number: 03-00883

Name of the Respondent

Frank Scalise

Hearing Site: Boca Raton, Florida

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**REPRESENTATION OF PARTIES**

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Mark E. Imbertson ("Imbertson"), hereinafter collectively referred to as "Claimants": Richard L. Martens, Esq. and Matthew Thibaut, Esq., Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, West Palm Beach, Florida.

For Frank Scalise, hereinafter referred to as "Respondent": Randall W. Henley, Esq., Randall W. Henley, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 20, 2003.

Claimant Merrill Lynch signed the Uniform Submission Agreement: March 31, 2003.

Claimant Imbertson signed the Uniform Submission Agreement: March 21, 2003.

Statement of Answer filed by Respondent on or about: April 11, 2003.

Respondent signed the Uniform Submission Agreement. May 30, 2003.

**CASE SUMMARY**

Claimants asserted that they had reached a confidential settlement agreement with Respondent in NASD Dispute Resolution Case Number 01-03957 (Frank Scalise v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Mark E. Imbertson) and, pursuant to that agreement, the parties had agreed to a stipulation to expunge the Central Registration Depository (the "CRD") records of Claimant Imbertson. The official closing of that case prior to the receipt of the expungement request by NASD Dispute Resolution required the filing of this claim.

In his Statement of Answer, Respondent stated that he concurs with Claimants' Statement of Claim and has no objection to the entry of an Award expunging the matter of Frank Scalise v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Mark E. Imbertson from Claimant Imbertson's CRD records.

**RELIEF REQUESTED**

Claimants requested expungement of the matter of Frank Scalise v. Merrill Lynch, Pierce, Fenner & Smith and

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Mark E. Imbertson from Claimant Imbertson's CRD records and any other relief that this Panel deems necessary.

Respondent did not delineate any additional relief request other than to reiterate and agree to Claimants request for the expungement.

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

On or about January 20, 2003, Claimants, within their Statement of Claim, submitted to NASD Dispute Resolution an agreed to, proposed Stipulation to Dismiss and Expunge Mark E. Imbertson's records in the matter of Frank Scalise v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Mark E. Imbertson.

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

### **AWARD**

After considering the pleadings and the Stipulation to Dismiss and Expunge Mark E. Imbertson's records, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

The Arbitrator recommends the expungement of all references to the matter of Frank Scalise v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Mark E. Imbertson (NASD Dispute Resolution Case Number 01-03957) from Claimant Imbertson's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Member 99-09 and 99-54, Claimant Imbertson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein are denied.

### **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	= \$500.00
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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, Merrill Lynch is a party to this dispute and was a member of the NASD at the time the following fees were assessed:

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00

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**Adjournment Fees**

No requests for adjournments were filed in this matter.

**Injunctive Relief Fees**

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:

No hearings were held in this matter.

**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 Merrill Lynch and Imbertson are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 500.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Claimant Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 2,250.00
<u>Less payments</u>	= \$ 2,250.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

**ARBITRATOR**

*Bruce A. McAllister, Esq.*

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*Public Arbitrator, Presiding Chairperson*

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**Arbitrator's Signature**

/s/

Bruce A. McAllister, Esq.

Public Arbitrator, Presiding Chairperson

8/4/03

Signature Date

8/5/03

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

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Arbitrator's Signature



Bruce A. McAllister, Esq.

Public Arbitrator, Presiding Chairperson

8/4/03

Signature Date

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