

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Amy Nislow

Case Number: 03-00911

Name of the Respondents  
Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Richard Hand  
Merrill Lynch & Co., Inc.

Hearing Site: Philadelphia, PA

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

**REPRESENTATION OF PARTIES**

Claimant, Amy Nislow, hereinafter referred to as "Claimant", was represented by Charles J. Piven, Law Offices of Charles J. Piven, P.A., Baltimore, Maryland.

Respondents, Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") and Richard Hand, hereinafter collectively referred to as "Respondents", were represented by Lawrence D. Ross, Esq., Bressler, Amery & Ross, P.C., Morristown, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on: February 6, 2003.

Claimant signed the Uniform Submission Agreement on: February 5, 2003.

Amended Statement of Claim filed on: August 6, 2003.

Claimant filed a Motion to File a Second Amended Statement of Claim on: May 10, 2004.

Joint Statement of Answer filed by Respondents on: May 5, 2003.

Respondent Richard Hand signed the Uniform Submission Agreement on: April 3, 2003.

Respondents filed a Response to the Motion to File a Second Amended Statement of Claim on: May 18, 2004.

In her Statement of Claim, Claimant named Merrill Lynch & Co., Inc. as a party. However, Merrill Lynch & Co., Inc. is a non-member and declined to submit to jurisdiction.

### **CASE SUMMARY**

In her Statement of Claim, Amended Statement of Claim, and Second Amended Statement of Claim, Claimant asserted the following causes of action: (i) breach of contract; (ii) fraud; (iii) violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law; (iv) violation of NASD and NYSE Regulations; (v) negligence; (vi) breach of fiduciary duty; (vii) fraudulent concealment; (viii) constructive fraud; (ix) negligent misrepresentation; (x) breach of confidential relationship; (xi) unjust enrichment; (xii) civil conspiracy; and (xiii) violation of the Pennsylvania Securities Act. The causes of action relate to the purchase of various unspecified securities, including Internet Capital Group, Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim, the Amended Statement of Claim, and the Second Amended Statement of Claim, and asserted the following affirmative defenses, among others: the Statement of Claim fails to state a claim upon which relief can be granted; Respondents did not breach any duty to Claimant imposed by operation of law or contract; the transactions in the accounts were appropriate and consistent with Claimant's desires and objectives; any damages allegedly sustained by Claimant were not caused by Respondents; upon information and belief, any alleged damages are due to acts or omissions of third parties over whom Respondents had no control or right to control; Respondents acted in good faith and without malice or reckless indifference to Claimant; the Statement of Claim is barred by the doctrines of laches, waiver, ratification and estoppel; upon information and belief, Claimant failed to mitigate any alleged damages and therefore Claimant's claims for damages are barred or reduced pro tanto; and Claimant is not entitled to punitive damages.

### **RELIEF REQUESTED**

Claimants requested unspecified compensatory and punitive damages, interest, treble damages, attorneys' fees and costs.

Respondents requested dismissal of the Statement of Claim in its entirety, that the costs of the proceeding be assessed against Claimant, and that the Arbitration Panel (the "Panel") award such other relief as it may deem appropriate.

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

Claimant and Respondent Merrill Lynch entered into a confidential settlement agreement. In connection with that agreement, Claimant dismissed all claims with prejudice against Respondents Merrill Lynch and Hand on April 26, 2004.

Therefore, the parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

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

1. Claimants' claims are hereby denied and dismissed with prejudice;
2. The parties have amenablely resolved their differences and have requested this Stipulated Award;
2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Richard Hand's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Member 99-09 and 99-54, Respondent Richard Hand must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. Each party shall bear its own costs and expenses associated with the above-referenced arbitration, including attorneys' fees, except as fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including punitive and treble damages, is denied in its entirety.

### **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 = \$ 250

#### **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(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

Member Surcharge = \$ 1,500

Pre-Hearing Process Fee	= \$ 750
<u>Hearing Process Fee</u>	= \$ 2,200
Total Member Fees	= \$ 4,450

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

One (1) Pre-hearing conference session with the Panel @ \$ 1,000	= \$ 1,000
Pre-hearing conference: November 18, 2003 1 session	
Total Forum Fees	= \$ 1,000

1. The Panel has assessed \$ 500 of the forum fees to Claimant.
2. The Panel has assessed \$ 500 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 250
<u>Forum Fees</u>	= \$ 500
Total Fees	= \$ 750
<u>Less payments</u>	= \$ 2,000
Refund owed to Claimant	= \$ 1,250
2. Respondent, Merrill Lynch, is assessed and shall pay:

<u>Member Fees</u>	= \$ 4,450
Total Fees	= \$ 4,450
<u>Less payments</u>	= \$ 5,200
Refund to Respondent Merrill Lynch's CRD account	= \$ 750
3. Respondents Merrill Lynch and Hand are jointly and severally assessed and shall pay:

<u>Forum Fees</u>	= \$ 500
Total Fees	= \$ 500
<u>Less payments</u>	= \$ 4,800
Refund owed to Respondent Merrill Lynch	= \$ 4,300

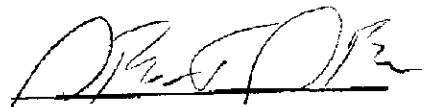
All balances are due and payable to NASD Dispute Resolution

**ARBITRATION PANEL**

Steven T. Stern, Esq.  
Mark E. Hollern  
Jerry G. Kos

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non Public-Arbitrator

Concurring Arbitrators' Signatures



Steven T. Stern  
Public Arbitrator, Presiding Chair

7/26/04  
Signature Date

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Mark E. Hollern  
Public Arbitrator

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Signature Date

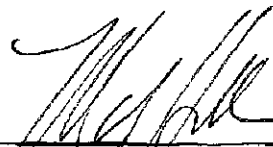
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Jerry G. Kos  
Non-Public Arbitrator

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Signature Date

August 11, 2004  
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

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Steven T. Stern  
Public Arbitrator, Presiding Chair

  
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Mark E. Hollern  
Public Arbitrator

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Public Arbitrator

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Jerry G. Kos  
Non-Public Arbitrator

August 11, 2004  
Date of Service (For NASD office use only)

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Signature Date

7/22/04  
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Signature Date

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Signature Date

NASD Dispute Resolution

Arbitration No. 03-00911

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Concurring Arbitrators' Signatures

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Public Arbitrator, Presiding Chair

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Mark E. Hollern  
Public Arbitrator

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Signature Date

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Jerry G. Kos  
Non-Public Arbitrator

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Signature Date

August 11, 2004  
Date of Service (For NASD office use only)

*Jerry G. Kos 8/5/04*  
\_\_\_\_\_  
Signature Date