

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

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In the Matter of the Arbitration Between:

Harold Allen, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Hiep V. Phan,  
Bryan A. Duckett, Joseph B. Yu, Frank S. Piotrkowski, and Charles R. Hartman, Respondents

Case Number: 03-01060

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customer v. Member, Associated Persons, and Non-Member

**REPRESENTATION OF PARTIES**

For Claimant:

Steven B. Lehat, Esq.  
Irvine, California

For Respondents Merrill Lynch, Pierce,  
Fenner & Smith Incorporated, Hiep V. Phan,  
Bryan A. Duckett, Joseph B. Yu, and  
Frank S. Piotrkowski:

Eric J. Glassman, Esq.  
Mennemeier, Glassman & Stroud LLP  
Sacramento, California

For Respondent Charles R. Hartman:

Charles R. Hartman  
In propria persona

**CASE INFORMATION**

Statement of Claim filed: February 12, 2003

Claimant's Uniform Submission Agreement signed: November 21, 2002

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith  
Incorporated, Hiep V. Phan, Bryan A. Duckett, Joseph B. Yu, and Frank S. Piotrkowski:  
April 28, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission  
Agreement signed: May 2, 2003

Respondent Hiep v. Phan's Uniform Submission Agreement signed: April 18, 2003

Respondent Bryan A. Duckett's Uniform Submission Agreement signed: May 2, 2003

Respondent Joseph B. Yu's Uniform Submission Agreement signed: May 6, 2003

Respondent Frank S. Piotrkowski's Uniform Submission Agreement signed: May 6, 2003

Respondent Charles R. Hartman's Uniform Submission Agreement signed: None Filed

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, negligence, unsuitable recommendations, misrepresentation, non-disclosure, omissions of fact, churning, unauthorized trading, and failure to supervise in connection with the purchase of equity mutual funds and shares of America Online, Inc., Cisco Systems, Inc., Oracle Corp., and Nokia Corp. stock.

In their Joint Statement of Answer, Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated, Hiep V. Phan, Bryan A. Duckett, Joseph B. Yu, and Frank S. Piotrkowski, denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested \$164,000.00 in compensatory damages, \$492,000.00 in punitive damages, disgorgement of commissions, unspecified interest, and costs, including attorney's fees.

In their Joint Statement of Answer, Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated, Hiep V. Phan, Bryan A. Duckett, Joseph B. Yu, and Frank S. Piotrkowski, requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of all reference to the Claim from Respondents' individual Central Registration Depository Records, and costs, including attorney's fees.

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

On March 13, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On April 14, 2003, Claimant dismissed Respondent Charles R. Hartman without prejudice.

On October 31, 2003, Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated, Hiep V. Phan, Bryan A. Duckett, Joseph B. Yu, and Frank S. Piotrkowski's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On July 19, 2004, Claimant dismissed Respondents Hiep V. Phan, Bryan A. Duckett, Joseph B. Yu, and Frank S. Piotrkowski with prejudice and dismissed all claims in their entirety.

On May 6, 2004, Non-Public Arbitrator Kenneth R. Hyman recused from the Panel. On October 28, 2004, NASD Dispute Resolution received the parties' agreement to proceed with two arbitrators.

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.

#### **STIPULATION**

Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated, Hiep V. Phan, Bryan A. Duckett, Joseph B. Yu, and Frank S. Piotrkowski have denied and continue to deny all material allegations of Claimant's claims.

Claimant is desirous that his complaint against Hiep V. Phan, Bryan A. Duckett, Joseph B. Yu, and Frank S. Piotrkowski be expunged from their respective Forms U-4, U-5, and any other report or reporting document, and he further agrees that it is appropriate that this matter be so expunged.

Merrill Lynch, Pierce, Fenner & Smith Incorporated shall bear any additional costs or fees charged by the NASD in connection with any proceedings that occur in connection with this Stipulation or otherwise occur in connection with Merrill Lynch, Pierce, Fenner & Smith Incorporated's effort to obtain expungement of this matter from the aforementioned Respondents' individual Central Registration Depository records.

### **AWARD**

After considering the pleadings and the parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants and Respondents have entered into a confidential settlement agreement.
2. The arbitration is dismissed in its entirety with prejudice upon Merrill Lynch, Pierce, Fenner & Smith Incorporated fulfilling its obligations pursuant to the confidential Settlement Agreement.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Hiep V. Phan's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Hiep V. Phan must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Bryan A. Duckett's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Bryan A. Duckett must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Joseph B. Yu's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Joseph B. Yu must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
6. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Frank S. Piotrkowski's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Frank S. Piotrkowski must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
7. The Parties shall bear their respective costs, including attorney's fees.
8. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 375.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party and the following fees are assessed:

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

#### **Adjournment Fees**

The following adjournment fees are assessed:

May 18 – 20, 2004, adjournment jointly requested by Parties	= \$ 1,200.00
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1. The Panel assessed \$600.00 of the adjournment fee to Claimant Harold Allen.
2. The Panel assessed \$600.00 of the adjournment fee jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated, Hiep V. Phan, Bryan A. Duckett, Joseph B. Yu, and Frank S. Piotrkowski.

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$ 1,200.00/session	= \$ 1,200.00
Pre-hearing conference: January 6, 2004	1 session

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<b>Total Forum Fees</b>	<b>= \$ 1,200.00</b>
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1. The Panel assessed \$600.00 of the forum fees to Claimant Harold Allen.
2. The Panel assessed \$600.00 of the forum fee jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated, Hiep V. Phan, Bryan A. Duckett, Joseph B. Yu, and Frank S. Piotrkowski.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$ 1,575.00
<u>Less payments</u>	= \$ (1,575.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
<u>Less payments</u>	= \$ (7,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated, Hiep v. Phan, Bryan A. Duckett, Joseph B. Yu, and Frank S. Piotrkowski are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$ 1,200.00
Less payments by Respondent Merrill Lynch, Pierce, Fenner & <u>Smith Incorporated</u>	= \$ (750.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 450.00</b>

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

**ARBITRATION PANEL**

**Michael W. Delaney**

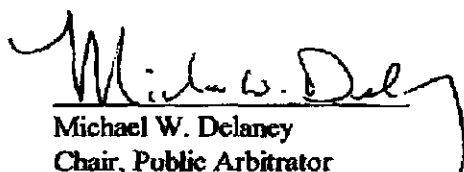
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**Public Arbitrator, Presiding Chair**

**Daniel K. Donahue, Esq.**

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**Public Arbitrator**

  
Michael W. Delaney  
Chair, Public Arbitrator

11-21-04  
Signature Date

Daniel K. Donahue, Esq.  
Public Arbitrator

Signature Date

11/30/04  
Date of Service

**ARBITRATION PANEL**

<b>Michael W. Delaney</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Daniel K. Donahue, Esq.</b>	-	<b>Public Arbitrator</b>

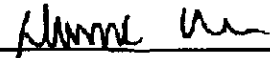
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**Michael W. Delaney**  
**Chair, Public Arbitrator**

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**Signature Date**

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**Daniel K. Donahue, Esq.**  
**Public Arbitrator**

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11/23/04  
**Signature Date**

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11/30/04  
**Date of Service**