

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

Case Number: 03-01084

Lunette Combee-Cliff

Names of Respondents

Hearing Site: Tampa, Florida

Merrill Lynch, Pierce, Fenner & Smith Inc. and  
Jeffrey Clements

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**REPRESENTATION OF PARTIES**

For Lunette Combee-Cliff, hereinafter referred to as Claimant: Emily Peacock, Esq., James, Hoyer, Newcomer & Smiljanich, P.A., Tampa, Florida.

For Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") and Jeffrey Clements ("Clements"), hereinafter referred to as Respondents: Bennett Falk, Esq. and Julie Russo, Esq., Morgan Lewis & Bockius, LLP, Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: February 12, 2003.

Claimant signed the Uniform Submission Agreement: February 12, 2003.

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

Respondent Merrill Lynch signed the Uniform Submission Agreement: April 4, 2003.

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

**CASE SUMMARY**

Claimant alleged that Respondents recommended unsuitable investments that were too risky for a retiree with conservative investment objectives and that Claimant sustained losses in her accounts as a result of Respondents' recommendations. Claimant further contended that Respondents violated Florida securities laws and common law. The causes of action relate to the purchase of various technology and Internet stocks in Claimant's accounts, including, but not limited to the following: Internet Capital Group, Inc., Cisco Systems, Inc., Provident Financial Group, Inc., EMC Corp., Internet Capital Group, Oracle and Tyco International, Ltd.

Respondents denied the allegations contained in the Statement of Claim. Respondents contended that any losses incurred by Claimant resulted from her decision to pursue an aggressive investment strategy.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of up to \$100,000.00, punitive damages, prejudgment interest, costs of this action, reasonable attorneys' fees and such other and further relief as the Panel deemed necessary or appropriate.

Respondents requested that the Arbitrators dismiss the Statement of Claim in its entirety and assess all fees and costs against Claimant.

### **ISSUES CONSIDERED AND DECIDED**

On or about September 4, 2003, Claimant informed NASD Dispute Resolution that the case was in the process of being amicably resolved between the parties and that a Stipulated Award would be submitted for execution by the arbitration panel.

On or about September 4, 2003, the parties notified NASD Dispute Resolution of their agreement to have two arbitrators execute the Stipulated Award.

On or about September 17, 2003, the parties submitted a proposed Stipulated Award for execution by the arbitration panel.

The Parties have 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 having been apprised of the Parties' amicable resolution of this matter and joint request that the Panel enter this Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed in its entirety without any finding of fault or liability on the part of Respondents Merrill Lynch or Clements.
2. Based upon Claimant's representation that after discovery, Claimant determined that Respondent Clements had not done anything wrong and based upon the joint request of the Parties, the Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Clements' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Clements must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Each Party shall bear its respective costs, including attorneys' fees.
4. All other requests for relief which are not addressed specifically in this Award are denied with prejudice.

## FEES

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

### Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

|                          |            |
|--------------------------|------------|
| Initial claim filing fee | = \$225.00 |
|--------------------------|------------|

### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

|                         |              |
|-------------------------|--------------|
| Member surcharge        | = \$1,100.00 |
| Pre-hearing process fee | = \$750.00   |

### Adjournment Fees

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

### Forum Fees and Assessments

The Panel assesses forum fees for each hearing 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 conducted in this matter and, thus, no forum fees assessed.

### 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 are 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

Claimant is solely liable for:

|                    |          |
|--------------------|----------|
| Initial Filing Fee | \$225.00 |
|--------------------|----------|

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|            |          |
|------------|----------|
| Total Fees | \$225.00 |
|------------|----------|

|               |          |
|---------------|----------|
| Less payments | \$225.00 |
|---------------|----------|

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|                                     |        |
|-------------------------------------|--------|
| Balance Due NASD Dispute Resolution | \$0.00 |
|-------------------------------------|--------|

Respondent Merrill Lynch is solely liable for:

|             |            |
|-------------|------------|
| Member Fees | \$1,850.00 |
|-------------|------------|

|                                     |            |
|-------------------------------------|------------|
| Total Fees                          | \$1,850.00 |
| Less payments                       | \$1,850.00 |
| Balance Due NASD Dispute Resolution | \$0.00     |

**ARBITRATION PANEL**

Andrew L. Dixon, Esq.  
Ruth Gordon, CFP

Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
Andrew L. Dixon, Esq.  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
Ruth Gordon, CFP  
Non-Public Arbitrator

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

October 14, 2003

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

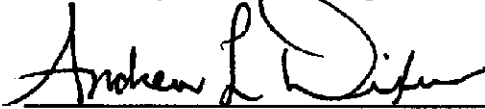
|                                     |            |
|-------------------------------------|------------|
| Total Fees                          | \$1,850.00 |
| Less payments                       | \$1,850.00 |
| Balance Due NASD Dispute Resolution | \$0.00     |

**ARBITRATION PANEL**

Andrew L. Dixon, Esq.  
Ruth Gordon, CFP

Public Arbitrator  
Non-Public Arbitrator

Concurring Arbitrators' Signatures



Andrew L. Dixon, Esq.  
Public Arbitrator

September 23, 2003

Signature Date

\_\_\_\_\_  
Ruth Gordon, CFP  
Non-Public Arbitrator

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

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

|                                     |            |
|-------------------------------------|------------|
| Total Fees                          | \$1,850.00 |
| Less payments                       | \$1,850.00 |
| Balance Due NASD Dispute Resolution | \$0.00     |

**ARBITRATION PANEL**

Andrew L. Dixon, Esq.  
Ruth Gordon, CFP

Public Arbitrator  
Non-Public Arbitrator

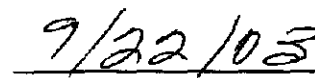
**Concurring Arbitrators' Signatures**

Andrew L. Dixon, Esq.  
Public Arbitrator



Ruth Gordon, CFP  
Non-Public Arbitrator

Signature Date



Signature Date

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