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**Amended Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Jeffrey Azpell

Case Number: 03-01340

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Patrick J. Welde

Hearing Site: Tampa, Florida

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

**REPRESENTATION OF PARTIES**

For Jeffrey Azpell, hereinafter referred to as "Claimant": Michael S. Taffe, Esq. and Jennifer B. Compton, Esq., Abel, Band, Russell, Collier, Pitchford & Gordon, Chartered, Sarasota, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLI") and Patrick J. Welde ("Welde"), hereinafter collectively referred to as "Respondents": Richard Martens, Esq. and Matthew N. Thibaut, Esq., Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: February 21, 2003.

Claimant signed the Uniform Submission Agreement: February 19, 2003.

Statement of Answer filed by Respondents on or about: May 9, 2003.

Respondent MLI signed the Uniform Submission Agreement: January 28, 2003.

Respondent Welde signed, but did not date, the Uniform Submission Agreement.

Reply in Avoidance of Respondents' Affirmative Defenses filed by Claimant on or about: May 21, 2003.

**CASE SUMMARY**

Claimant filed a claim alleging unsuitability based on the following: 1) breach of federal securities statutes; 2) breach of state securities statutes; 3) violation of NASD rules and regulations; 4) violation of NYSE rules and regulations; 5) breach of fiduciary duty; 6) negligence; 7) negligent misrepresentation; 8) gross negligence; 9) fraud/misrepresentation; and 10) failure to supervise.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim, denied any liability for any alleged monetary damages and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested \$1,029,113.00 in compensatory damages, rescission, punitive damages, interest, costs, attorneys' fees, repayment of any costs or adverse tax consequences, refund of all funds transferred to Respondents, and any and all other relief that the Panel deemed just and equitable.

Respondents requested that the Claim be dismissed in its entirety, that all costs be assessed against Claimant and that all references to this matter be expunged from Respondent Welde's NASD Central Registration Depository ("CRD") record.

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

The matter involved disputed claims and was settled by the parties, on or about June 3, 2004, prior to the submission of any evidence by any party, and prior to the final arbitration hearing. Prior to settlement, Respondent Welde was dismissed with prejudice from this action. No evidence was ever submitted to this Panel by any party. Accordingly, the parties stipulated that all references to this arbitration proceeding shall be expunged from Respondent Welde's permanent CRD record.

In accordance therewith, on or about June 3, 2004, Respondents submitted a Stipulation to Dismiss and Expunge Respondent Welde's CRD Record and a proposed Stipulated Award with a request that the Panel enter the Stipulated Award expunging all references to this matter from Respondent Welde's registration records maintained by the NASD CRD.

The parties agreed that the Amended Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the parties' pleadings and the submissions, the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's withdrawal of his claims against Respondents with prejudice is accepted and Respondents are dismissed from this matter.
- 2) The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Welde's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Welde must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **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

**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, MLI is a member firm and a party:

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00
Total Member Fees	= \$8,550.00

**Adjournment Fees**

No adjournment fees were incurred during this proceeding.

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

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: February 23, 2004	1 session

One (1) Pre-hearing session with the Panel @ \$1,200.00	= \$1,200.00
Pre-hearing conference: September 10, 2003	1 session

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Total Forum Fees	= \$1,650.00
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Pursuant to the agreement of the parties, the Panel has assessed \$825.00 of the forum fees to Claimant and \$825.00 of the forum fees to Respondents, jointly and severally.

**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**

Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 825.00
Total Fees	= \$1,325.00
Less payments	= \$1,325.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLI is solely liable for:

Member Fees	= \$8,550.00
Total Fees	= \$8,550.00
Less payments	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents MLI and Welde are jointly and severally liable for:

Forum Fees	= \$ 825.00
Total Fees	= \$ 825.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 825.00

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

**ARBITRATION PANEL**

Christopher M. Shulman, Esq.	-	Public Arbitrator, Presiding Chairperson
Susan Dawson, Esq.	-	Public Arbitrator
Daniel B. Daugherty	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/  
Christopher M. Shulman, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_/S/  
Susan Dawson, Esq.  
Public Arbitrator

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

\_\_\_\_\_/S/  
Daniel B. Daugherty  
Non-Public Arbitrator

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

August 3, 2004  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 03-01340  
Amended Stipulated Award Page 5

Concurring Arbitrators' Signatures



Christopher M. Shulman, Esq.  
Public Arbitrator, Presiding Chairperson

7/23/04  
Signature Date

\_\_\_\_\_  
Susan Dawson, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Daniel B. Daugherty  
Non-Public Arbitrator

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Christopher M. Shulman, Esq.  
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Susan Dawson, Esq.  
Public Arbitrator

7/27/04  
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