

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

---

In the Matter of the Arbitration Between:

Michael R. Stuart (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Carol Scatolini (Respondents)

Case Number: 03-01542

Hearing Site: Boston, Massachusetts

---

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

**REPRESENTATION OF PARTIES**

Claimant Michael R. Stuart ("Stuart") hereinafter referred to as "Claimant" appeared *pro se*.

Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") and Carol Scatolini ("Scatolini") hereinafter referred to as "Respondents": David E. Bamberger, Esq. Office of General Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY. Previously represented by: Elyse N. Post, Esq., Office of General Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed: February 28, 2003.

Claimant signed the Uniform Submission Agreement: March 17, 2003.

Joint Statement of Answer filed by Respondents: May 23, 2003.

Merrill Lynch signed the Uniform Submission Agreement: May 22, 2003.

Scatolini signed the Uniform Submission Agreement: April 22, 2003.

**CASE SUMMARY**

Claimant's Statement of Claim asserted the following causes of action: (i) breach of fiduciary duty; (ii) negligence; (iii) violation of NASD conduct rules; and (iv) failure to supervise on the part of Merrill Lynch.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Pursuant to the Statement of Claim, Claimant requested the following damages:

Compensatory and/or Rescissory Damages	\$60,000.00
--	-------------

Disgorgement of compensation	Amount Unspecified
Punitive Damages	Amount Unspecified
Expert Costs	Amount Unspecified
Interest	Amount Unspecified
Other	Amount Unspecified

Respondents requested that the Statement of Claim be dismissed in its entirety, that the Arbitration Panel issue an order that directs all references of this proceeding and the underlying complaint be expunged from the CRD records of the individual Respondent, that the cost of this proceeding is assessed against the Claimant, and that Respondents be awarded such other and further relief as is deemed just and proper.

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

Respondent Carol Scatolini was dismissed with prejudice by agreement of the parties on or about January 17, 2004.

Merrill Lynch and Claimant advised NASD DR on or about January 20, 2004, that they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

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 parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for entry of such an award, the written stipulation thereto, the Panel hereby grants the motion and enters this award granting the following relief:

- 1) Respondent Merrill Lynch is dismissed with prejudice.
- 2) The Panel recommends the expungement of all references to the above-captioned arbitration from respondent Carol Scatolini's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to Notices to Members 99-09 and 99-54, Respondent Carol Scatolini must obtain confirmation from a court of competent jurisdiction before the CRD will execute this expungement directive.
- 3) Each party shall bear its own costs and expenses associated with the above-referenced arbitration. All NASD Dispute Resolution fees and costs for this matter have previously been assessed and no change in those assessments is being made hereby.
- 4) Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. has received or will collect the non-refundable filing fees for each claim as follows:

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 firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc., is a party.

Member Surcharge	= \$1,100.00
Pre-Hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

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

Two (2) Pre-hearing conference sessions with the Panel @ \$750.00/session	= \$1,500.00
Pre-hearing conferences:     September 18, 2003     1 session	
November 20, 2003     1 session	
<u>Total Forum Fees</u>	<u>= \$1,500.00</u>

1. The Panel has assessed \$375.00 of the forum fees against Claimant.
2. The Panel has assessed \$750.00 of the forum fees against Merrill Lynch.
3. The Panel has assessed \$375.00 of the forum fees jointly and severally against Respondents.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 375.00</u>
Total Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Refund Due	= \$ 375.00

2. Merrill Lynch is solely liable for:

Member Fees	= \$3,550.00
<u>Forum Fees</u>	<u>= \$ 750.00</u>
Total Fees	= \$4,300.00

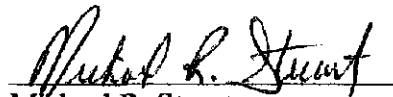
<u>Less payments</u>	<u>= \$3,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

3. Respondents are jointly and severally with the following fees and costs:

<u>Forum Fees</u>	<u>= \$ 375.00</u>
<u>Total Fees</u>	<u>= \$ 375.00</u>
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 375.00

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**

  
\_\_\_\_\_  
Michael R. Stuart  
Claimant

Feb 19, 2004  
Date

\_\_\_\_\_  
Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Respondent

\_\_\_\_\_  
Date


\_\_\_\_\_  
Carol Scatolini  
Respondent

\_\_\_\_\_  
Date

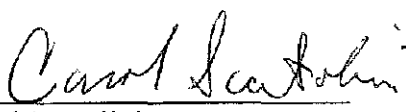
**Parties' Signatures**

\_\_\_\_\_  
Michael R. Stuart  
Claimant

\_\_\_\_\_  
Date

 for  
Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Respondent

3/1/04  
Date

  
Carol Scatolini  
Respondent

2-25-04  
Date

**ARBITRATION PANEL**

Robert S. Hark, Esq.	-	Public Arbitrator, Presiding Chair
Paul J. Carey	-	Public Arbitrator
Jack A. Marshall	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Robert S. Hark, Esq.  
Public Arbitrator, Presiding Chair

03/04/2004  
Date

\_\_\_\_\_  
Jack A. Marshall  
Public Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Paul J. Carey  
Non-Public Arbitrator

\_\_\_\_\_  
Date

March 18, 2004

Date of Service (For NASD office use only)


**ARBITRATION PANEL**

Robert S. Hark, Esq.	-	Public Arbitrator, Presiding Chair
Paul J. Carey	-	Public Arbitrator
Jack A. Marshall	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Robert S. Hark, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jack A. Marshall  
Public Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Paul J. Carey  
Non-Public Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
March 18, 2004  
Date of Service (For NASD office use only)



**ARBITRATION PANEL**

Robert S. Hark, Esq.	-	Public Arbitrator, Presiding Chair
Paul J. Carey	-	Public Arbitrator
Jack A. Marshall	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Robert S. Hark, Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jack A. Marshall  
Public Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
*Paul J. Carey*  
Paul J. Carey  
Public Arbitrator

\_\_\_\_\_  
Date 3/16/04

March 18, 2004  
\_\_\_\_\_  
Date of Service (For NASD office use only)