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

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In the Matter of the Arbitration Between:

Names of the Claimants

Letitia M. Hodgetts  
Thomas J. Hodgetts

Case Number: 03-01603

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Donald M. Schaefer

Hearing Site: Tampa, Florida

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

**REPRESENTATION OF PARTIES**

For Letitia M. Hodgetts and Thomas J. Hodgetts, hereinafter collectively referred to as "Claimants": John R. Newcomer, Esq. and Michael J. Stanton, Esq., James Hoyer Newcomer & Smiljanich, P.A., Tampa, Florida.

For Merrill Lynch, Pierce, Fenner & Smith Inc. ("MLPFS") and Donald M. Schaefer ("Schaefer"), hereinafter collectively referred to as "Respondents": Bennett Falk, Esq. and Steven Hemmert, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 5, 2003.

Claimants signed the Uniform Submission Agreement: February 3, 2003.

Statement of Answer filed by Respondents on or about: May 20, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: on or about: March 21, 2003.

Respondent Schaefer signed the Uniform Submission Agreement: on or about: June 30, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: violations of the Florida Securities and Investor Protection Act; breach of fiduciary duty; negligence; fraudulent inducement; negligent supervision; and intentional infliction of emotional distress. The causes of action relate to the purchase of Advanced Fibre Communications, Compaq, Ciena Corp., Beyond.com, Talk.com, Virtual Reality Corp., and Inktomi Corp. technology stocks in the Claimants accounts.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the sum of \$100,000.00, rescission, compensatory damages for emotional distress and suffering, punitive damages, pre and post judgment interest, costs and disbursements, damages, including attorneys' fees under Section 517.211 of the Florida Statutes, expert witness fees, and such other and further relief as deemed appropriate by the Panel.

Respondents requested dismissal of the Statement of Claim in its entirety, costs of defending this matter, reimbursement of forum fees, the expungement of all references to this matter from the NASD Central Registration Depository ("CRD") registration records of Respondent Schaefer, and further relief as deemed just by the Panel. Respondents reserve their right, and hereby formally notify Claimants of their intent to seek, pursuant to Sections 57.105 and 517.211(6) of the Florida Statutes, in a court of competent jurisdiction, reimbursement of its attorneys' fees and costs incurred in connection with this matter.

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

On or about August 4, 2004, the parties notified NASD Dispute Resolution ("NASD") that they had entered into a confidential settlement agreement. In connection with that agreement, Claimants dismissed all claims with prejudice against Respondents.

On or about August 31, 2004, the parties filed with NASD a proposed Stipulated Award.

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.

### **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 MLPFS or Schaefer.
2. Based upon the joint request of the parties, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Schaefer's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Schaefer must obtain confirmation from a court of competent jurisdiction before the NASD 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 Stipulated Award, are denied with prejudice.

### **FEES**

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

#### **Filing Fees**

NASD 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 firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent MLPFS is a member firm and 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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

#### **Three-Day Cancellation Fee**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

No three-day cancellation fees were incurred in this matter.

#### **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 in this matter.

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

The Panel has assessed forum fees for each 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:

One (1) Pre-hearing sessions with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conferences: October 15, 2003 1 session	
<u>Total Forum Fees</u>	<u>= \$ 750.00</u>

The Panel has assessed forum fees of \$375.00 to Claimants, jointly and severally.  
The Panel has assessed forum fees of \$375.00 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 in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 375.00
<u>Retained Hearing Session Deposit pursuant to Rule 10332(f) of Code</u>	<u>= \$ 375.00</u>
Total Fees	= \$ 975.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

Member Fees	= \$3,550.00
Total Fees	= \$3,550.00
<u>Less payments</u>	<u>= \$3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

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

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

**ARBITRATION PANEL**

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Paul Sidney Elliott, Esq.	-	Public Arbitrator, Chairperson
Cheryl Mitchell	-	Public Arbitrator
James D. Bruner	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Paul Sidney Elliott, Esq.  
Public Arbitrator, Chairperson

October 29, 2004  
Signature Date

/s/  
Cheryl Mitchell  
Public Arbitrator

October 30, 2004  
Signature Date

/s/  
James D. Bruner  
Industry Arbitrator

November 4, 2004  
Signature Date

November 10, 2004  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 03-01603

Stipulated Award Page 5 of 5

Concurring Arbitrators' Signatures



Paul Sidney Elliott, Esq.  
Public Arbitrator, Chairperson

10/29/04

Signature Date

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Cheryl Mitchell  
Public Arbitrator

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

\_\_\_\_\_  
James D. Bruner  
Industry Arbitrator

\_\_\_\_\_  
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Cheryl Mitchell  
Public Arbitrator

10/30/04  
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James D. Bruner  
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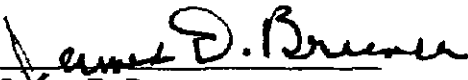
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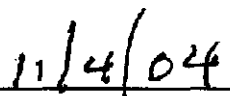
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