

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

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In the Matter of the Arbitration Between:

George G. Touponse, Jr. (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Patrick John Murphy (Respondents)

Case Number: 03-01908

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant George G. Touponse, Jr. ("Touponse") hereinafter referred to as "Claimant": John E. Lawlor, Esq., Mineola, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Patrick John Murphy ("Murphy") hereinafter collectively referred to as "Respondents": Joel S. Forman, Esq., Curtis, Mallet-Prevost, Colt & Mosle, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: March 17, 2003.

Claimant signed the Uniform Submission Agreement: September 27, 2002.

Joint Statement of Answer filed by Respondents on or about: June 6, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: May 5, 2003.

Respondent Murphy signed the Uniform Submission Agreement: May 16, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of Connecticut law; unsuitability; misrepresentations and omissions; breach of fiduciary duty; failure to supervise; breach of customer agreement; negligence and gross negligence, and negligent misrepresentations. The causes of action relate to unspecified securities.

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**

Claimant requested compensatory damages in the amount of \$318,000.00; disgorgement; punitive damages; interest from the date of loss to the date of the payment of the award;

reasonable attorneys' fees; costs, expert and witness fees and administrative expenses; and any other and further relief the Arbitration Panel finds just and equitable.

Respondents requested that the Panel dismiss with prejudice the Statement of Claim; an order that any reference to the claims be expunged from Respondent Murphy's records with the Central Registration Depository; reimbursement of the member surcharges and assessment of all forum fees against Claimant; costs, including attorneys' fees.

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

The parties advised NASD Dispute Resolution that they, without admitting liability, have amicably settled this matter.

On or about September 24, 2004, the parties submitted a proposed Consent Motion for Dismissal and Expungement for the Panel's approval. This document is annexed hereto as Exhibit "A".

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 an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The claims of Claimant are dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Patrick John Murphy's 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 Murphy must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

#### **FEES**

Pursuant to 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 = \$ 300.00

**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, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

**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:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: July 21, 2004 1 session

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
<u>Pre-hearing conference: November 13, 2003 1 session</u>	
Total Forum Fees	= \$1,575.00

1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimant has been assessed \$525.00 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Merrill Lynch has been assessed \$525.00 of the forum fees.
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Murphy has been assessed \$525.00 of the forum fees.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 525.00</u>
Total Fees	= \$ 825.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

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2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$ 525.00
Total Fees	= \$5,725.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 525.00

3. Respondent Murphy is solely liable for:

Forum Fees	= \$ 525.00
Total Fees	= \$ 525.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 525.00

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**

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George G. Touponse, Jr.  
Claimant

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Signature Date

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

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Signature Date

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Patrick John Murphy  
Respondent

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Signature Date

**ARBITRATION PANEL**

Hilary B. Miller, Esq.	-	Public Arbitrator, Presiding Chair
Lincoln W. Craighead	-	Public Arbitrator
David Denison	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

\_\_\_\_\_  
Hilary B. Miller, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Lincoln W. Craighead  
Public Arbitrator

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

\_\_\_\_\_  
David Denison  
Non-Public Arbitrator

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

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

**ARBITRATION PANEL**

Hilary B. Miller, Esq.	-	Public Arbitrator, Presiding Chair
Lincoln W. Craighead	-	Public Arbitrator
David Denison	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.



Hilary B. Miller, Esq.  
Public Arbitrator, Presiding Chair

10/27/04  
Signature Date

\_\_\_\_\_  
Lincoln W. Craighead  
Public Arbitrator

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

\_\_\_\_\_  
David Denison  
Non-Public Arbitrator

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

\_\_\_\_\_  
October 29, 2004  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Hilary B. Miller, Esq.	-	Public Arbitrator, Presiding Chair
Lincoln W. Craighead	-	Public Arbitrator
David Denison	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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\_\_\_\_\_  
Hilary B. Miller, Esq.  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Lincoln W. Craighead  
Public Arbitrator

10/28/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
David Denison  
Non-Public Arbitrator

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

\_\_\_\_\_  
October 29, 2004  
Date of Service (For NASD office use only)



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**ARBITRATION PANEL**

Hilary B. Miller, Esq.  
Lincoln W. Craighead  
David Denison

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Consenting Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

Hilary B. Miller, Esq.  
Public Arbitrator, Presiding Chair

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

Lincoln W. Craighead  
Public Arbitrator

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

David Denison  
David Denison  
Non-Public Arbitrator

October 28, 2004  
Signature Date

October 29, 2004  
Date of Service (For NASD office use only)