

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

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In the Matter of the Arbitration Between:

Harmony Thaler (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Paul Padovanni (Respondents)

Case Number: 03-02685

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Harmony Thaler ("Thaler") hereinafter referred to as "Claimant": Greg Scott Goodman, Esq., Goodman & Goodman, Mount Sinai, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Paul Padovanni ("Padovanni") hereinafter collectively referred to as "Respondents": Ethan Leonard, Esq., The Law Offices of Neal Brickman, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: April 9, 2003.

Claimant signed the Uniform Submission Agreement: March 28, 2003.

Joint Statement of Answer filed by Respondents on or about: June 19, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 20, 2003.

Respondent Padovanni signed the Uniform Submission Agreement: June 5, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; breach of contract; breach of duty; negligence; fraud and deceit; breach of fiduciary duty; violations of federal securities laws; violations of industry rules and regulations; churning; violation of Section 349 of the New York General Business Law; failure to supervise; and control person liability.

The causes of action relate to common stock including, but not limited to AT&T, ADC Telecom, Compaq, EDS, GTE, IBN, Lucent, Motorola, and SBC.

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 \$110,000.00; interest; costs, expenses, and disbursements, including attorneys' fees; punitive damages; and other relief that the Panel deems just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety; costs, disbursements, and attorneys' fees; and such other and further relief as the Panel may deem just and proper.

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

On or about April 22, 2004, Claimant withdrew her claims, with prejudice, against Respondent Padovanni.

On or about May 3, 2004, Claimant withdrew her claims, with prejudice, against Respondent Merrill Lynch.

On or about June 7, 2004, Respondents submitted a Stipulated Award 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. Claimant's claims are hereby dismissed, with prejudice, as against Respondent Merrill Lynch.
2. Any and all claims for costs, fees, punitive damages, or attorneys' fees, or any other relief, except for that specifically provided for herein, by either party, are dismissed with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Paul Padovanni'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 Padovanni must obtain confirmation from a court of competent jurisdiction before CRD will execute the

expungement directive.

4. 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
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#### **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 the Panel @ \$1,125.00/session	= \$1,125.00
<u>Pre-hearing conference: November 17, 2003 1 session</u>	
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees against Claimant.
2. The Panel has assessed \$562.50 of the forum fees jointly and severally against Respondents.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 862.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Refund Due Claimant	= \$ 562.50

2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

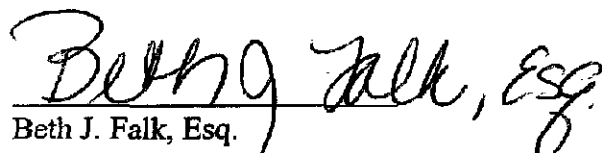
<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

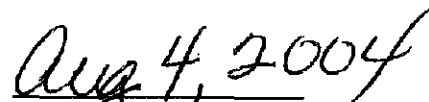
All balances are due and payable to NASD Dispute Resolution

**ARBITRATION PANEL**

Beth J. Falk, Esq.	-	Public Arbitrator, Presiding Chair
Robert Youdelman, Esq.	-	Public Arbitrator
Jonathan Frede	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Beth J. Falk, Esq.  
Public Arbitrator, Presiding Chair

  
Signature Date

\_\_\_\_\_  
Robert Youdelman, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Jonathan Frede  
Non-Public Arbitrator

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

\_\_\_\_\_  
August 12, 2004  
Date of Service (For NASD office use only)

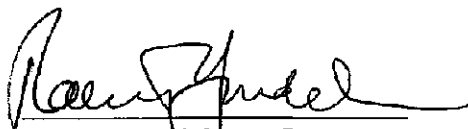
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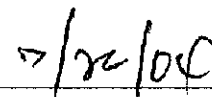
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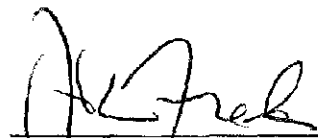
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Public Arbitrator

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



Jonathan Frede  
Non-Public Arbitrator

7/28/2004  
Signature Date

August 12, 2004

Date of Service (For NASD office use only)

EXHIBIT "A"

NASD DISPUTE RESOLUTION, INC.

-----X  
HARMONY THALER,

Claimant,

Case No.: 03-02685

- against -

STIPULATED AWARD

MERRILL LYNCH PIERCE FENNER & SMITH,  
Respondent.  
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On reading the stipulated and agreed upon letter submitted by counsel for the respective parties, and dated , 2004 and the exhibits annexed thereto; and it appearing that

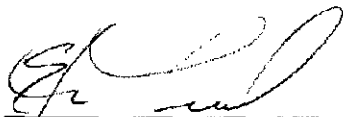
That any claims previously existing against Paul Padovani have been withdrawn by Claimant, Harmony Thaler;

IT IS HEREBY STIPULATED AND DIRECTED that:

1. This matter be, and hereby is, dismissed with prejudice as against Merrill Lynch Pierce Fenner & Smith Incorporated;
2. Any and all claims for costs, fees, punitive damages or attorneys' fees or any other relief, except for that specifically provided for herein, by either Party are hereby dismissed with prejudice; and
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Paul Padovani'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 Padovani must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Dated: New York, New York  
May , 2004

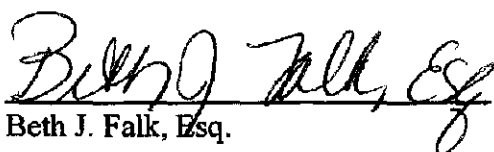




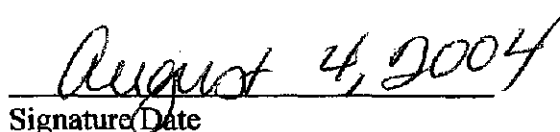
Ethan Leonard, Esq.  
The Law Offices of Neal Brickman  
Attorneys for Merrill Lynch  
630 Third Avenue - 21<sup>st</sup> Floor  
New York, New York 10017  
(212) 986-6840



Gregg Scott Goodman, Esq.  
Goodman & Goodman  
Attorneys for Ms. Thaler  
45 Jesse Way  
Mount Sinai, New York 11766  
(631) 331-6182



Beth J. Falk, Esq.



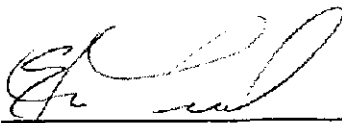
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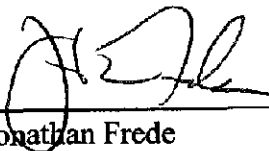
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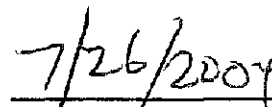
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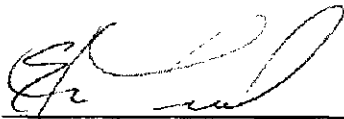
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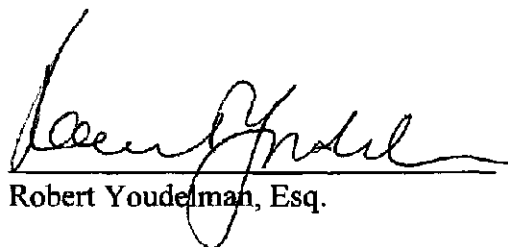
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Robert Youdelman, Esq.

7/22/04  
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Signature Date