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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Nancy L. Gimson

Case Number: 03-02775

Names of the Respondents  
Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Scott A. Geric

Hearing Site: Tampa, Florida

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

**REPRESENTATION OF PARTIES**

For Nancy L. Gimson, hereinafter referred to as "Claimant": Michael J. Stanton, Esq., James, Hoyer, Newcomer & Smiljanich, P.A., Tampa, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Scott A. Geric ("Geric"), hereinafter collectively referred to as "Respondents": Jill E. Dokson, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: April 14, 2003.

Claimant signed the Uniform Submission Agreement: April 7, 2003.

Statement of Answer filed by Respondents on or about: July 29, 2003.

Respondent Merrill signed the Uniform Submission Agreement: June 2, 2003.

Respondent Geric did not file an executed Uniform Submission Agreement.

*Motion to Amend the Statement of Claim and Amended Statement of Claim filed by Claimant on or about: February 22, 2005.*

Answer to Amended Statement of Claim (containing a request for dismissal of all claims) filed by Respondents on or about: April 7, 2005.

**CASE SUMMARY**

Claimant's Statement of Claim, as amended, asserted the following causes of action: negligence and gross negligence; breach of fiduciary duty; breach of contract; and, violations of §517.301, Florida Statutes. The causes of action relate to the purchase of various, allegedly unsuitable, equities in Claimant's retirement account.

Unless specifically admitted in their Answer, Respondents denied all allegations of wrongdoing set forth in the Statement of Claim, as amended, and asserted various defenses. Respondents further contended that any losses

incurred by Claimant resulted from her own decision to pursue an investment strategy that sought higher returns for her investments.

### **RELIEF REQUESTED**

Claimant requested the following relief: compensatory damages in the amount of \$100,000.00, including but not limited to, rescissory damages and all legal interest due and accruing thereon; punitive damages; damages under the provisions of the Florida Securities Act, Section 517.211, Fla. Stat., including attorneys' fees; costs of this action, including all fees and expenses of expert witnesses; and, such other relief as the Panel deemed appropriate under the circumstances.

Respondents requested that the Panel dismiss the Statement of Claim, as amended, in its entirety, assess all fees and costs to Claimant, and grant such other and further relief as the Panel deemed just.

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

Respondent Geric did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

Claimant filed an Amended Statement of Claim to which Respondents did not object. On or about March 4, 2005, the Panel issued an Order granting Claimant's Motion to Amend the Statement of Claim.

On or about April 21, 2005, the Panel issued an Order denying Respondents' request for dismissal of all claims.

On or about May 23, 2005, the parties filed with NASD Dispute Resolution a notice of settlement.

On or about June 23, 2005, the parties filed with NASD Dispute Resolution a proposed Stipulated Award for review and approval by the Panel.

The parties have 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, as amended, is dismissed in its entirety without any finding of fault or liability on the part of Respondents Merrill or Geric.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Geric'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 Geric must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. Each party shall bear their respective costs, including attorneys' fees.
4. All other requests for relief that are not addressed specifically in this Stipulated Award are denied, with prejudice.

### **FEES**

Pursuant to 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 person at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill is a member firm and a party.

Member surcharge = \$1,100.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$1,700.00

Total Member Fees = \$3,550.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournments fees were assessed in this matter.

#### **Three-Day Cancellation Fees**

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 assessed 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 assessed 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:

Two (2) Pre-hearing sessions with the Panel @ \$750.00 per session	= \$1,500.00
Pre-hearing conferences: March 8, 2004 1 session	
December 6, 2004 1 session	

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Total Forum Fees	= \$1,500.00
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The Panel has assessed forum fees in the amount of \$750.00 to Claimant.

The Panel has assessed forum fees in the amount of \$750.00 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.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$ 975.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill is solely liable for:

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

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$ 750.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

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

**ARBITRATION PANEL**

John M. Tapley	-	Public Arbitrator, Presiding Chairperson
Cheryl Mitchell	-	Public Arbitrator
Joseph D. Valenti	-	Non-Public Arbitrator

### Concurring Arbitrators' Signatures

/s/  
John M. Tapley  
Public Arbitrator, Presiding Chairperson

June 24, 2005  
Signature Date

/s/

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**Cheryl Mitchell**  
**Public Arbitrator**

June 28, 2005  
Signature Date

/s/  
Joseph D. Valenti  
Non-Public Arbitrator

June 24, 2005  
Signature Date

June 28, 2005  
Date of Service (For NASD Dispute Resolution office use only)

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**Concurring Arbitrators' Signatures**

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John M. Tapley  
Public Arbitrator, Presiding Chairperson

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

Cheryl Mitchell  
Cheryl Mitchell  
Public Arbitrator

6/28/05  
Signature Date

\_\_\_\_\_  
Joseph D. Valenti  
Non-Public Arbitrator

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

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Date of Service (For NASD Dispute Resolution office use only)

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JOHN M. TAPLEY

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Cheryl Mitchell  
Joseph D. Valenti

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Public Arbitrator  
Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

  
Signature Date

Cheryl Mitchell  
Public Arbitrator

Signature Date

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Cheryl Mitchell	-	Public Arbitrator
Joseph D. Valenti	-	Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Signature Date

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Cheryl Mitchell  
Public Arbitrator

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

  
\_\_\_\_\_  
Joseph D. Valenti  
Non-Public Arbitrator

10-24-05  
\_\_\_\_\_  
Signature Date

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