

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Manuel Silva, Jr.

and

Case Number: 03-03092  
Hearing Site: Houston, Texas

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc., and  
Mark W. Menard

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**NATURE OF DISPUTE**

Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Manuel Silva, Jr. ("Claimant") was represented by Robert L. Rolnick, Esq., Houston, Texas.

Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Mark W. Menard ("Menard"), hereinafter collectively referred to as "Respondents," were represented by Lauryn J. Hart, Esq., Merrill Lynch Pierce Fenner & Smith, Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 23, 2003. The Submission Agreement of Claimant, Manuel Silva, Jr., was signed on or about April 22, 2003.

The Joint Statement of Answer was filed by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Mark W. Menard, on or about June 25, 2003. The Submission Agreement of Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., was signed on or about June 25, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, churning, misrepresentations and omission of facts. The causes of action relate to the recommendation and purchase of unspecified securities.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the

Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant is barred from bringing the claims asserted in the Statement of Claim by the doctrines of laches, waiver, ratification and estoppel; and Claimant assumed the risk of these transactions and therefore may not recover.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$155,883.56
Punitive/Exemplary Damages	\$ 50,000.00
Interest	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs, attorneys' fees and expungement.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent, Mark W. Menard, did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") is bound by the determination of the arbitration panel on all issues submitted.

Respondent, Mark W. Menard, was dismissed with prejudice by agreement of the parties on July 27, 2004. Merrill Lynch and Claimant advised that on or about July 27, 2004, they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Claimant's claims against Respondent, Merrill Lynch, are dismissed with prejudice;

- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent, Mark W. Menard's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent, Mark W. Menard, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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, the member firm is Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge = \$ 1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 2,750.00

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

The Arbitration 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. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,125.00 = \$1125.00  
Pre-hearing conference: September 26, 2003 1 session  

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Total Forum Fees = \$1125.00

The Arbitration Panel has assessed \$562.50 of the forum fees to Manuel Silva, Jr.

The Arbitration Panel has assessed \$562.50 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc. and Mark W. Menard.

### **FEE SUMMARY**

Claimant, Manuel Silva, Jr., is liable for:

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

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for:

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

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Mark W. Menard, are jointly and severally liable for:

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

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

**ARBITRATION PANEL**

Martha Failing, Esq. - Public Arbitrator, Presiding Chair  
Jeff Kilgore, Esq. - Public Arbitrator  
Mobley E. Cox, Jr. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Martha Failing, Esq.  
Martha Failing, Esq.  
Public Arbitrator, Presiding Chair

October 28, 2004  
Signature Date

/s/ Jeff Kilgore, Esq.  
Jeff Kilgore, Esq.  
Public Arbitrator

October 29, 2004  
Signature Date

/s/ Mobley E. Cox, Jr.  
Mobley E. Cox, Jr.  
Non-Public Arbitrator

October 28, 2004  
Signature Date

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

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Jeff Kilgore, Esq. - Public Arbitrator  
Mobley E. Cox, Jr. - Non-Public Arbitrator

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*Martha Failing*  
Martha Failing, Esq.  
Public Arbitrator, Presiding Chair

OCT 28 2004  
Signature Date

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Jeff Kilgore, Esq.  
Public Arbitrator

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Signature Date

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Mobley E. Cox, Jr.  
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Public Arbitrator, Presiding Chair

  
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Jeff Kilgore, Esq.  
Public Arbitrator

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Mobley E. Cox, Jr.  
Non-Public Arbitrator

October 28, 2004  
Signature Date

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



**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

CASE: 03-03095

UBS PaineWebber, Inc. n/k/a UBS Financial Services, Inc., Claimant vs. Kelly Doyle, Respondent.

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**ATTORNEYS:**

For Claimant, UBS PaineWebber, Inc. n/k/a UBS Financial Services, Inc., ("Claimant") appeared Laura Martin, Esq. of the firm Davidson, Manchel & Brennan, LLP, Northvale, NJ, formerly represented by Romaine L. Gardner, Esq., Staten Island, NY.

Respondent, Kelly Doyle, ("Respondent"), did not respond to the Statement of Claim.

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DATE FILED: April 28, 2003

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**CASE SUMMARY:** Claimant alleged that Respondent has failed to repay an amount representing the unforgiven and outstanding principal amount of an employee forgivable loan. Claimant maintained that due to Respondent's actions, the corporation suffered financial losses.

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**Claim Data**

Claim: \$5,280.90  
Interest: Unspecified

Filing Fees: Unspecified  
Other: Unspecified

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**Award Data**

Award: \$5,280.90  
Interest: At the rate of Citibank "prime rate" plus 2% from 5/6/02 to date of award pursuant to the terms of the Promissory Note.

Filing Fees: \$375.00  
Other: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent is liable and shall pay to the Claimant \$5,280.90. 2) Respondent is liable and shall pay to the Claimant interest at the Citibank "prime rate" plus 2% from May 6, 2002 to date of award pursuant to the terms of the Promissory Note. 3) All other relief requests are denied. 4) The \$750.00 filing fee previously deposited with NASD Dispute Resolution by the Claimant, shall be retained by NASD Dispute Resolution. 5) Respondent is liable and shall pay Claimant \$375.00 as reimbursement of one-half of the filing fee.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Claimant, UBS PaineWebber, n/k/a UBS Financial Services, Inc. has paid to NASD Dispute Resolution the \$325.00 Member Surcharge previously invoiced.

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**OTHER ISSUES:** Pursuant to the By-Laws of NASD Dispute Resolution, the arbitrator determined that Respondent, Kelly Doyle was served notice of the Statement of Claim and Notification of Arbitrator by regular mail, and Overdue Notice by certified mail, as evidenced by the signed signature card on file and is therefore bound by the arbitrator's ruling and determination.

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James C. Stone, III

Sole Non-Public Arbitrator

**AFFIRMATION**

I, James C. Stone, III, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



James C. Stone, III

Oct. 11, 2003

Signature Date

October 22, 2003

Date of Service (For NASD-DR office use only)