

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Frances K. Irvin

Case Number: 03-03412

Names of the Respondents  
Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Stephen N. Taft

Hearing Site: Baltimore, Maryland

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

**REPRESENTATION OF PARTIES**

Claimant, Francis K. Irvin ("Claimant"), was represented by James R. Hooper, Esq., Hooper & Weiss, Orlando, Florida.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Stephen N. Taft ("Taft"), hereinafter collectively referred to as "Respondents", were represented by David E. Bamberger, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on May 8, 2003.

Claimant signed the Uniform Submission Agreement on April 27, 2003.

Joint Statement of Answer filed by Respondents on August 6, 2003.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on December 1, 2003.

Respondent Taft signed the Uniform Submission Agreement on August 7, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: unsuitability, negligence, breach of contract, omissions/misrepresentation, breach of fiduciary duty, violation of Section 10b-5 of the Securities Exchange Act of 1934, common law fraud, violations of NYSE and NASD rules, failure to supervise, and *respondeat superior*. The causes of action relate to technology and other growth-oriented stocks such as ML Focus Twenty, WorldCom, Global Crossing, and Tyco.

Respondents denied that any recommendations were unsuitable and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant in his Statement of Claim requested:

Compensatory Damages	\$65,078.38
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested dismissal of Claimant's Statement of Claim in its entirety, expungement of all references to this arbitration from Respondent Taft's registration record maintained by the NASD Central Registration Depository ("CRD"), costs, and attorneys' fees.

**OTHER ISSUES CONSIDERED AND DECIDED**

Merrill Lynch and Claimant advised that on or about December 8, 2004, they entered into an agreement to settle this matter. Under such settlement, Claimant will receive from Merrill Lynch \$21,000.00 plus costs, including future costs, any NASD-imposed costs associated with the cancellation of final hearing, and costs of mediation.

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**

The parties having entered into a binding agreement on December 8, 2004 to settle and resolve this matter, now, in lieu of a hearing, upon motion of all parties and upon all prior pleadings and papers submitted in this matter, the Panel hereby grants the motion and enters this award granting the following relief:

1. The Claims against Respondents Merrill Lynch and Taft are dismissed with prejudice;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Stephen Taft's registration records maintained by the NASD Central Registration Depository with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Taft must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Respondent Merrill Lynch shall pay or absorb future costs, any costs associated with cancellation of final hearing, and the costs of the mediation;
4. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and

5. Any and all relief not specifically addressed herein is denied in its entirety.

#### 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 = \$ 225.00

##### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch is 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:

October 26-28, 2004 adjournment to mediate by all parties = \$ 750.00

##### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: February 5, 2004 1 session	
Total Forum Fees	= \$ 750.00

The Panel has assessed \$750.00 of the forum fees to Respondent Merrill Lynch.

#### FEES SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 225.00
Total Fees	= \$ 225.00
Less payments	= \$ 975.00
Refund Due Claimant	= \$ 750.00

2. Respondent Merrill Lynch is assessed and shall pay the following fees:

Member Fees	= \$3,550.00
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Adjournment Fee	= \$ 750.00
Forum Fees	= \$ 750.00
Total Fees	= \$5,050.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$1,500.00

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

ARBITRATION PANEL

Jon G. Lotis, Esq.	-	Public Arbitrator, Presiding Chairperson
Edward M. Statland, Esq.	-	Public Arbitrator, Panelist
Carole Rollinson	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Jon G. Lotis, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Edward M. Statland, Esq.  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Carole Rollinson  
Non-Public Arbitrator, Panelist

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

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

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Concurring Arbitrators' Signatures

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Jon G. Lotis, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Edward M. Statland, Esq.  
Public Arbitrator, Panelist

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Signature Date

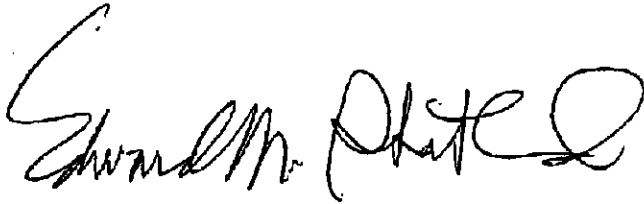
  
\_\_\_\_\_  
Carole Rollinson  
Non-Public Arbitrator, Panelist

3/16/05  
\_\_\_\_\_  
Signature Date

3/24/05  
\_\_\_\_\_  
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Dissenting Arbitrator's Signature



3/23/05

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Edward M. Statland, Esq.  
Public Arbitrator, Panelist

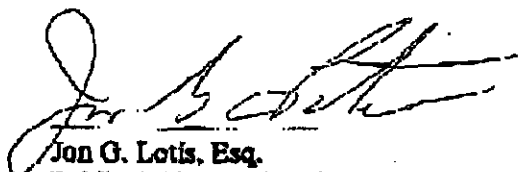
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Concurring Arbitrators' Signatures

  
Jon G. Lotis, Esq.  
Public Arbitrator, Presiding Chairperson

3-11-05  
Signature Date

\_\_\_\_\_  
Edward M. Statland, Esq.  
Public Arbitrator, Panelist

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Signature Date

\_\_\_\_\_  
Carole Rollinson  
Non-Public Arbitrator, Panelist

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Signature Date

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