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

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In the Matter of the Arbitration Between:

Name of the Claimant

Dominick and Angelina Casamassina, JTWROS

Case Number: 03-03460

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Alan Gladstone

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Dominick and Angelina Casamassina, JTWROS, hereinafter referred to as "Claimant": John T. Getz, Esq., Feldman & Getz, LLP, Boca Raton, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Alan Gladstone ("Gladstone"), hereinafter collectively referred to as "Respondents": Keith Olin, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: April 30, 2003.

Statement of Answer filed by Respondents on or about: August 13, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 9, 2003.

Respondent Gladstone signed the Uniform Submission Agreement: August 18, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) suitability; 2) negligence 3) negligent hiring and supervision; 4) breach of fiduciary duty; 5) violations of Chapter 517, Florida Statutes; 6) misrepresentations and/or omissions; and, 7) fraud. The causes of action relate to Claimant's investments in the technology sector including but not limited to an investment in Lucent Technologies.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim, and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in an amount of no less than \$350,000.00; 2) interest; 3) reasonable market return; 4) rescission; 5) costs; 6) attorneys' fees; 7) unspecified punitive damages; and, 8) any and all other relief that the undersigned arbitrators (the "Panel") deemed as just and proper.

Respondents requested: 1) that the Panel enter an award dismissing Claimant's claims in their entirety; and, 2) such other and further relief as the Panel deemed just and proper.

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

On or about May 23, 2005, Claimants notified NASD Dispute Resolution that the parties had settled this matter.

On or about August 2, 2005, Respondents filed the parties' proposed Stipulated Award.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings and the stipulation of the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- (1) Any and all claims against Respondents Merrill Lynch and Gladstone are dismissed, with prejudice. Claimant and Respondents have entered into a confidential settlement agreement.
- (2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gladstone'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 Gladstone must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- (3) Each party shall bear his/her/its own costs and expenses associated with the above-referenced arbitration, including attorneys' fees.
- (4) Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party and a member firm.

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

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during the proceedings.

**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:

There were no three-day cancellation fees assessed during the proceedings.

**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.

There were no injunctive relief fees assessed during these proceedings.

**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 a single arbitrator @ \$450.00/session = \$ 450.00

Pre-hearing conference: February 13, 2004 1 session

Two (2) Pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 2,250.00

Pre-hearing conferences: December 10, 2003 1 session

February 12, 2004 1 session

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Total Forum Fees

= \$2,700.00

The Panel has assessed \$1,350.00 of the forum fees to Claimant.

The Panel has assessed \$1,350.00 of the forum fees to Respondent Merrill Lynch.

**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	= \$ 300.00
Forum Fees	= \$1,350.00
Total Fees	= \$1,650.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 225.00

Respondent Merrill Lynch is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$1,350.00
Total Fees	= \$6,550.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$1,350.00

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

**ARBITRATION PANEL**

<i>Randy R. Freedman, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>William P. Loughnane</i>	-	<i>Public Arbitrator</i>
<i>Sanford M. Naiditch</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

/s/  
Randy R. Freedman, Esq.  
Public Arbitrator, Presiding Chairperson

8/12/05  
Signature Date

/s/  
William P. Loughnane  
Public Arbitrator

8/12/05  
Signature Date

/s/  
Sanford M. Naiditch  
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8/12/05  
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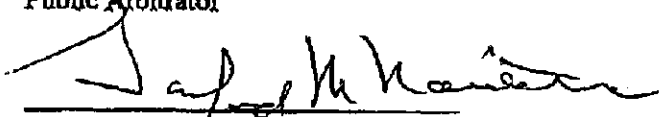
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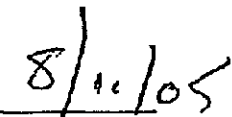
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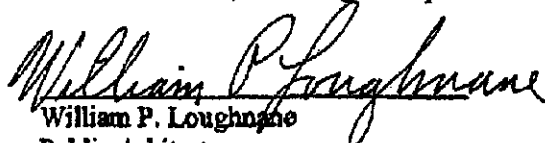
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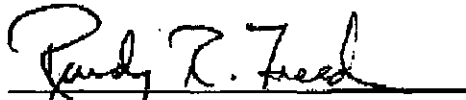
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