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

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In the Matter of the Arbitration Between:

Names of the Claimants

Richard M. Burton  
Teresa O. Burton  
James A. Burton

Case Number: 03-04220

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Ronald J. Hebert

Hearing Site: New Orleans, Louisiana

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

**REPRESENTATION OF PARTIES**

For Richard M. Burton ("RMB"), Teresa O. Burton ("TOB") and James A. Burton ("JAB"), hereinafter collectively referred to as "Claimants": James A. Burton, Esq., Simon, Peragine, Smith & Redfearn, LLP, New Orleans, Louisiana.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLF") and Ronald J. Hebert ("Hebert"), hereinafter collectively referred to as "Respondents": Harold G. Ognelodh, Esq., MLI Office of General Counsel, New York, New York.

**CASE INFORMATION**

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

Claimants RMB and TOB signed the Uniform Submission Agreements: June 5, 2003.

Claimant JAB signed the Uniform Submission Agreement: June 9, 2003.

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

Respondent Hebert signed Uniform Submission Agreement: July 17, 2003.

Respondent MLI signed, but did not date, the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted a cause of action for breach of contract related to the purchase in Claimants' accounts of the common stock Rare Medium Group, Inc.

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

**RELIEF REQUESTED**

Claimants RMB and TOB requested compensatory damages in the amount of \$300,800.00, and Claimant JAB requested compensatory damages in the amount of \$37,600.00. Additionally, Claimants requested interest, all additional damages allowed at law or equity, and all costs incurred in these proceedings, including filing and forum fees.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that the Panel award forum fees, costs, reasonable attorney's fees, and such other relief as is deemed proper. Respondents further requested that the customer complaint and this arbitration proceeding be expunged from the NASD Central Registration Depository ("CRD") record of Respondent Hebert.

**OTHER ISSUES CONSIDERED AND DECIDED.**

On or about May 10, 2004, the parties filed with NASD Dispute Resolution a notice of settlement.

On or about June 8, 2004, the parties submitted a proposed Stipulated Award for review and approval by the Panel.

The parties have agreed that the Stipulated Award in this matter may be entered in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

**AWARD**

On May 7, 2004, the parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing, and upon motion of Claimants and Respondents for entry of this Stipulated Award, the Panel hereby grants the motion and enters this Stipulated Award granting the following relief:

- 1) The claims against Respondents MLI and Hebert are dismissed with prejudice. Claimants and Respondents have entered into a confidential settlement agreement.
- 2) Claimants stipulate to entry of an award expunging the customer complaint and this arbitration proceeding from Respondent Herbert's registration records maintained by the NASD CRD.
- 3) The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Hebert's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Hebert must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) Each party shall bear its own costs and expenses associated with the referenced arbitration.
- 5) 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

#### **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, MLI is a member firm and a party:

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Total Member Fees = \$5,200.00

#### **Adjournment Fees**

No adjournments were requested 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 incurred during this proceeding.

#### **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:

One (1) Pre-hearing session with the Panel @ \$1,125.00/session = \$1,125.00

Pre-hearing conference: November 12, 2003 1 session

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Total Forum Fees = \$1,125.00

The Panel has assessed the total forum fees of \$1,125.00 to Respondent MLI.

**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.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,425.00
<u>Less Payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLI is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$6,325.00
<u>Less Payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$1,125.00

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

**ARBITRATION PANEL**

Daniel Q. Posin, Esq.	-	Public Arbitrator, Presiding Chairperson
Larry A. Feldman	-	Public Arbitrator
Timothy B. Alack	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/  
Daniel Q. Posin, Esq.  
Public Arbitrator, Presiding Chairperson

June 17, 2004  
Signature Date

\_\_\_\_\_/s/  
Larry A. Feldman  
Public Arbitrator

June 18, 2004  
Signature Date

/s/  
Timothy B. Alack  
Non-Public Arbitrator

June 18, 2004  
Signature Date

June 21, 2004  
Date of Service (For NASD Dispute Resolution office use only)

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Timothy B. Alack	-	Non-Public Arbitrator

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Daniel Q. Posin, Esq.  
Public Arbitrator, Presiding Chairperson

6/17/04

Signature Date

Larry A. Feldman  
Public Arbitrator

Signature Date

NASD Dispute Resolution  
Arbitration No. 03-04220  
Stipulated Award Page 5



Timothy B. Alack  
Non-Public Arbitrator

6-18-04

Signature Date

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

**NASD Dispute Resolution**  
**Arbitration No. 03-04220**  
**Stipulated Award Page 4**

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 Signature Date

\_\_\_\_\_  
 Larry A. Feldman  
 Public Arbitrator

6-18-04  
 \_\_\_\_\_  
 Signature Date

