

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

---

In the Matter of the Arbitration Between:

Ben Neumann and Andrea Neuman, Claimants v. Merrill Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Lisa C. Darin, Matthew C. Mullaly and Henry Blodget, Respondents

Case Number: 03-04339

Hearing Site: Las Vegas, Nevada

---

Nature of the Dispute: Customers v. Member, Non-Member, and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimants:

Louis Cutrone, Esq.  
Cutrone & Associates  
Encino, California

Joshua Haffner, Esq.  
Law Offices of Joshua Haffner  
Marina del Rey, California

For Respondents Merrill Lynch & Co., Inc.,  
Merrill Lynch, Pierce, Fenner & Smith Incorporated,  
Lisa C. Darin, and Matthew C. Mullaly:

Susan Hoffman, Esq.  
Paul D. Allen, Esq.  
Allyson T. Sakai, Esq.  
Bingham McCutchen LLP  
Los Angeles, California

For Respondent Henry Blodget:

Joseph Edmonson, Jr., Esq.  
Foley & Lardner LLP  
Washington, DC

**CASE INFORMATION**

Statement of Claim filed: June 12, 2003

Claimants' Joint Uniform Submission Agreement signed: June 25, 2003

Joint Statement of Answer filed by Respondents Merrill Lynch & Co., Inc., Merrill Lynch, Pierce,

Fenner & Smith Incorporated, Lisa C. Darin, and Matthew C. Mullaly: September 3, 2003

Statement of Answer filed by Respondent Henry Blodget: August 12, 2004

Respondent Merrill Lynch & Co. Inc.'s Uniform Submission Agreement signed:  
September 20, 2004

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission  
Agreement signed: September 20, 2004

Respondent Lisa C. Darin's Uniform Submission Agreement signed: July 24, 2003

Respondent Matthew C. Mullaly's Uniform Submission Agreement signed: July 25, 2003

Respondent Henry Blodget's Uniform Submission Agreement signed: December 17, 2004

### **CASE SUMMARY**

Claimants alleged breach of contract, breach of fiduciary duty, fraud/deceit, constructive fraud, negligence, negligent misrepresentation, and securities fraud. Claimants' claims involved securities including Interliant stock.

All Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and set forth various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested \$12,000,000.00 in compensatory damages, \$50,000,000.00 in punitive damages, interest at the rate of 10% per annum from date of loss, forum fees, attorney fees, witness and production fees, and other case-related fees.

Respondents Merrill Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Lisa C. Darin, and Matthew C. Mullaly requested dismissal of the Claimants' Statement of Claim in its entirety and expungement of all references to this action from the CRD records of the Respondents.

Respondent Henry Blodget requested that the Statement of Claim be dismissed with prejudice, attorneys' fees and costs, and that all references to the Statement of Claim be expunged from his CRD record.

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

On March 3, 2005, Claimant dismissed Respondent Henry Blodget from this arbitration.

The parties have entered into a confidential settlement agreement pursuant to which Claimants have agreed to dismiss their claims with prejudice. As part of the settlement, Claimants agree that a Stipulated Award should be issued expunging the references to this proceeding from the NASD Central Registration Depository ("CRD") records of Lisa C. Darin and Mathew C. Mullaly, with the understanding that pursuant to the NASD Notice to Members 99-09, Ms. Darin and Mr. Mullaly must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directives.

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

### **AWARD**

After considering the pleadings and the Parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant and Respondents have entered into a confidential settlement agreement.
2. The Panel acknowledges the parties' confidential settlement and based thereon each and every one of Claimants' claims asserted against Respondents is dismissed with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Lisa C. Darin's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Lisa Darin must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Matthew C. Mullaly's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Matthew Mullaly must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. The parties shall bear their respective costs, including attorneys' fees.
6. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 600.00
--------------------------	-------------

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$ 3,750.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,500.00
<b>Total Member Fees</b>	<b>= \$10,000.00</b>

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

3 Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 3,600.00
Pre-hearing conferences:	
December 7, 2004	1 session
February 18, 2005	1 session
November 2, 2005	1 session

---

<b>Total Forum Fees</b>	<b>= \$ 3,600.00</b>
-------------------------	----------------------

1. The Panel assessed \$1,800.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$1,200.00 of the forum fees jointly and severally to Respondents Merrill Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Lisa C. Darin, Matthew C. Mullaly, and Henry Blodget.
3. The Panel assessed \$600.00 of the forum fees jointly and severally to Respondents Merrill Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Lisa C. Darin, and Matthew C. Mullaly.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 1,800.00
Total Fees	= \$ 2,400.00
Less payments	= \$(1,800.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 600.00</b>

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is charged with the following fees and costs:

Member Fees	= \$ 10,000.00
Less payments	= \$(10,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Merrill Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Lisa C. Darin, Matthew C. Mullaly, and Henry Blodget are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,200.00
Less payments	= \$( 0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,200.00</b>

4. Respondents Merrill Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Lisa C. Darin, and Matthew C. Mullaly are charged jointly and severally with the following fees and costs:

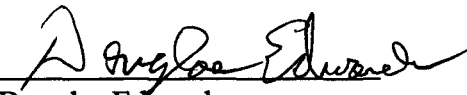
Forum Fees	= \$ 600.00
Less payments	= \$( 0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 600.00</b>

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

**ARBITRATION PANEL**

Douglas Edwards	-	Public Arbitrator, Presiding Chair
Neil J. Beller	-	Public Arbitrator
Lincoln F. Stock	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Douglas Edwards  
Chair, Public Arbitrator

1/23/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Neil J. Beller  
Public Arbitrator

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

\_\_\_\_\_  
Lincoln F. Stock  
Non-Public Arbitrator

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

February 9, 2006  
\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

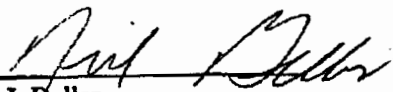
Douglas Edwards  
Neil J. Beller  
Lincoln F. Stock

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Douglas Edwards  
Chair, Public Arbitrator

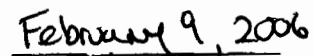
\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Neil J. Beller  
Public Arbitrator

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

\_\_\_\_\_  
Lincoln F. Stock  
Non-Public Arbitrator

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

  
\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

Douglas Edwards	-	Public Arbitrator, Presiding Chair
Neil J. Beller	-	Public Arbitrator
Lincoln F. Stock	-	Non-Public Arbitrator

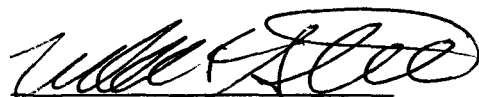
**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Douglas Edwards  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Neil J. Beller  
Public Arbitrator

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



Lincoln F. Stock  
Non-Public Arbitrator



Signature Date

1/27/06

February 9, 2006  
Date of Service



