

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

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In the Matter of the Arbitration Between:

Name of the Claimants:

Charles C. Staples  
Margaret D. Staples

Case Number: 03-04408

Name of the Respondents:

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Mark S. Rodman

Hearing Site: Richmond, Virginia

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

**REPRESENTATION OF PARTIES**

Claimants, Charles C. Staples and Margaret D. Staples, hereinafter collectively referred to as "Claimants", were represented by Robert L. Herskovits, Bachner & Herskovits, P.C., New York, New York.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Mark S. Rodman, hereinafter collectively referred to as "Respondents", were represented by Harold G. Ognelodh, Esq., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on June 16, 2003.

Claimants signed the Uniform Submission Agreement on June 13, 2003.

Statement of Answer filed by Respondents on September 5, 2003.

Respondent Rodman signed the Uniform Submission Agreement on September 8, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action, among others: suitability, violations of Sections 10 and 20 of the Securities Exchange Act, negligent supervision, respondeat superior, common law fraud, breach of contract, negligence, and breach of fiduciary duty.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: the Statement of Claim fails to state a claim upon which relief may be granted, Claimants suffered no damages because of any of Respondents' actions, Respondents acted in good faith, contributory negligence, Claimants' claims are barred by the defenses of estoppel, waiver, ratification, and laches, Respondents followed all applicable securities rules and regulations, Claimants' claims are barred because they do not have a private right of action, Claimants did not justifiably rely on any misstatement or omission by Respondents, and failure to mitigate damages.

**RELIEF REQUESTED**

Claimants in their Statement of Claim requested:

Compensatory Damages	\$209,867.00
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified

Respondents in their Statement of Answer requested a dismissal of the Statement of Claim in its entirety with prejudice; an assessment of all forum fees of this proceeding against Claimants; an order expunging this claim from Mark S. Rodman's permanent registration records maintained by the Central Registration Depository "CRD"; and an award of the costs and reasonable attorney fees incurred by Respondents in connection with this arbitration.

**OTHER ISSUES CONSIDERED AND DECIDED**

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.

**AWARD**

Pursuant to the above, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims against Respondents are dismissed with prejudice. Claimants 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 Mark S. Rodman'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 Mark S. Rodman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including punitive damages, 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 = \$ 300.00

**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 at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

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

**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 Panel @ \$ 1,125.00	= \$1,125.00
Pre-hearing conference: December 29, 2003 1 session	
<u>Total Forum Fees</u>	<u>= \$1,125.00</u>

1. The Panel has assessed \$562.50 of the forum fees to Claimants.
2. The Panel has assessed \$281.25 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.
3. The Panel has assessed \$281.25 of the forum fees to Respondent Rodman.

**FEE SUMMARY**

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

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

Refund owed Claimants = \$ 562.50

3. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is assessed and shall pay the following fees:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$ 281.25</u>
Total Fees	= \$5,481.25
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 281.25

4. Respondents Rodman is assessed and shall pay the following fees:

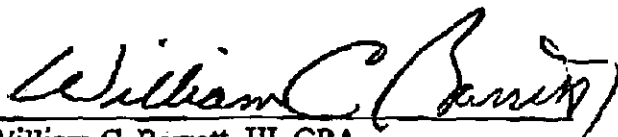
<u>Forum Fees</u>	<u>= \$ 281.25</u>
Total Fees	= \$ 0.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 281.25

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

**ARBITRATION PANEL**

William C. Barrett, III, CPA	-	Public Arbitrator, Presiding Chairperson
Wesley C. Wilson	-	Public Arbitrator, Panelist
Thomas V. Grigsby	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



William C. Barrett, III, CPA  
Public Arbitrator, Presiding Chairperson

01-13-2005

Signature Date

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Wesley C. Wilson  
Public Arbitrator, Panelist

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

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Thomas V. Grigsby  
Non-Public Arbitrator, Panelist

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Signature Date

January 21 2005  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

William C. Barrett, III, CPA  
Public Arbitrator, Presiding Chairperson

Signature Date

Wesley C. Wilson  
Wesley C. Wilson  
Public Arbitrator, Panelist

8 Jan 05  
Signature Date:

Thomas V. Grigsby  
Non-Public Arbitrator, Panelist

Signature Date:

January 21, 2005  
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Public Arbitrator, Presiding Chairperson

Signature Date

Wesley C. Wilson  
Public Arbitrator, Panelist

Signature Date

Thomas V. Origsby  
Thomas V. Origsby  
Non-Public Arbitrator, Panelist

1-13-05  
Signature Date

January 21, 2005  
Date of Service (For NASD Dispute Resolution office use only)