

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Thomas Rodriguez Moran

and

Case Number: 03-04550  
Hearing Site: Houston, Texas

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
and Newlin E. Lancaster

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**NATURE OF DISPUTE**

Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Thomas Rodriguez Moran ("**Claimant**") was represented by Francis X. Sexton, Jr., Esq., Silverio & Hall, Miami, Florida.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("**Merrill Lynch**") and Newlin E. Lancaster ("**Lancaster**"), hereinafter collectively referred to as "Respondents," were represented by Harold G. Ognelodh, Esq., Merrill Lynch, New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 23, 2003. The Uniform Submission Agreement of Claimant, Thomas Rodriguez Moran, was signed on or about May 27, 2003.

The Joint Statement of Answer was filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Newlin E. Lancaster, on or about October 9, 2003. The Uniform Submission Agreement of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., was signed on or about October 3, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, negligence, failure to supervise, unauthorized trading and omission of facts. The causes of action related to the purchase of several unspecified mutual funds.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Newlin E. Lancaster, denied the allegations made in the Statement of Claim and asserted defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; and assumption of risk and statutes of limitations barred Claimant's causes of action.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$110,000.00
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondent Lancaster requested expungement of all reference to this matter from his CRD.

### **OTHER ISSUES CONSIDERED & DECIDED**

Claimant and Respondents advised NASD that on or about March 7, 2005, they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

Respondent, Newlin E. Lancaster, did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, is bound by the determination of the arbitration panel on all issues submitted.

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Claimant's claims against Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Newlin E. Lancaster, are dismissed with prejudice;

- 2.) The panel recommends the expungement, of all references to the above captioned arbitration from Respondent, Newlin E. Lancaster's, registration record maintained by NASD Central Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent, Newlin E. Lancaster, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any and all relief not specifically addressed herein, including attorneys' fees and costs is denied and all claims are dismissed with prejudice.

### **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 firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Merrill Lynch, Pierce, Fenner & Smith, Inc.

Member surcharge = \$1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$2,750.00

#### **Adjournment Fees**

Adjournments granted during these proceedings:

September 15-17, 2004,  
(adjournment requested by Merrill Lynch) = \$1,125.00

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

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conferences: February 6, 2004 1 session	
December 22, 2004 1 session	
<b>Total Forum Fees</b>	<b>= \$2,250.00</b>

The Arbitration Panel has assessed \$1,125.00 of the forum fees to Thomas Rodriguez Moran.

The Arbitration Panel has assessed \$1,125.00 of the forum fees jointly and severally to Merrill Lynch, Pierce, Fenner & Smith, Inc. and Newlin E. Lancaster.

**Fee Summary**

Claimant, Thomas Rodriguez Moran, is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 1,125.00</u>
<u>Total Fees</u>	<u>= \$ 1,425.00</u>
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ .00

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., is liable for:

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

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Newlin E. Lancaster, are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 1,125.00</u>
<u>Total Fees</u>	<u>= \$ 1,125.00</u>
<u>Less payments</u>	<u>= \$ .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**

Danielle L. Hargrove - Public Arbitrator, Presiding Chair  
Peter D. Sterling- Public Arbitrator  
Sellenne Calhamer - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ Danielle L. Hargrove  
Danielle L. Hargrove  
Public Arbitrator, Presiding Chair

April 27, 2005  
Signature Date

/s/ Peter D. Sterling  
Peter D. Sterling  
Public Arbitrator

April 25, 2005  
Signature Date

/s/ Sellenne Calhamer  
Sellenne Calhamer  
Non-Public Arbitrator


April 28, 2005  
Signature Date

May 3, 2005  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Danielle L. Hargrove - Public Arbitrator, Presiding Chair  
Peter D. Sterling- Public Arbitrator  
Selenne Calhamer - Non-Public Arbitrator

Concurring Arbitrators:

  
Danielle L. Hargrove  
Public Arbitrator, Presiding Chair

4/27/05  
Signature Date

\_\_\_\_\_  
Peter D. Sterling  
Public Arbitrator

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

\_\_\_\_\_  
Selenne Calhamer  
Non-Public Arbitrator

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

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**ARBITRATION PANEL**

Danielle L. Hargrove - Public Arbitrator, Presiding Chair  
Peter D. Sterling - Public Arbitrator  
Sellenne Calhamer - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Danielle L. Hargrove  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Peter D. Sterling  
Public Arbitrator

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

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Sellenne Calhamer  
Non-Public Arbitrator

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Signature Date

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**ARBITRATION PANEL**

Danielle L. Hargrove - Public Arbitrator, Presiding Chair  
Peter D. Sterling- Public Arbitrator  
Selenne Calhamer - Non-Public Arbitrator

**Concurring Arbitrators:**

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Danielle L. Hargrove  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Peter D. Sterling  
Public Arbitrator

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

  
\_\_\_\_\_  
Selenne Calhamer  
Non-Public Arbitrator

4.28.05  
\_\_\_\_\_  
Signature Date

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