

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Moses Findley

and

Case Number: 03-04964  
Hearing Site: Detroit, Michigan

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,  
and Brian K. Maxson

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**NATURE OF CASE**

Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Moses Findley ("Claimant") was represented by Wm. Jemison Mims, Jr., Levin Papantonio, Thomas, Eschner & Proctor, P.A., Pensacola, Florida.

Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Brian K. Maxson ("Maxson"), hereinafter collectively referred to as "Respondents," were represented by Andrea Morgan Greene, Esq., Maynard, Cooper and Gale, P.C., Birmingham, Alabama.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 10, 2003. The Submission Agreement of Claimant was signed but not dated.

The Statement of Answer was filed jointly by Respondents on or about September 26, 2003. The Submission Agreement of MLPFS was signed on or about October 13, 2005. The Submission Agreement of Maxson was signed on or about October 15, 2005.

Respondents filed a Motion for More Definite Statement and Motion to Strike on or about September 26, 2003. Claimant filed a Response to Respondents' Motion for More Definite Statement and Motion to Strike on or about October 21, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, fraud, negligent misrepresentation, violation of blue sky laws, and violation of Section 10(b) of the Exchange Act and Rule 10(b)-5. The causes of action related to Claimant's allegations that Maxson put Claimant in unsuitable investments in tech and pharmaceutical stocks including Aether System, Excite @home, and InfoSpace recommended by Merrill Lynch analysts. Claimant also asserted that Maxson failed to follow sell orders.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim on which relief can be granted, Claimant's claims are barred by the applicable statutes of limitation, and Claimant's claims are barred by waiver, ratification, acquiescence and estoppel.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$72,821.69, plus interest, punitive damages, attorneys' fees, costs and any other relief the panel deemed appropriate.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondent Maxson requested that all references to this matter be expunged from his CRD records.

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

In its Order entered on or about April 30, 2005, the panel denied Respondents' Motion for a More Definite Statement of Claim and Respondents' Motion to Strike Dinallo Affidavit.

Claimant and MLPFS entered into a confidential settlement agreement. In connection with that agreement, Claimant dismissed all claims with prejudice against Respondents MLPFS and Maxson. Therefore, the parties submit this Stipulated Award to the panel for its consideration and request that it be entered.

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 original(s) remain on file with the NASD Dispute Resolution (the "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, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Brian K. Maxson's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Brian K. Maxson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and

- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby 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 = \$ 225.00

#### **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 = \$ 1,100.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 1,700.00

#### **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 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 x \$450.00 = \$ 450.00  
Pre-hearing conference: September 10, 2004 1 session  
  
Two (2) Pre-hearing sessions with Panel x \$750.00 = \$ 1,500.00  
Pre-hearing conferences: April 7, 2004 1 session  
April 22, 2004 1 session  

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Total Forum Fees = \$ 1,950.00

The Arbitration Panel has assessed \$975.00 of the forum fees to Moses Findley.

The Arbitration Panel has assessed \$975.00 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc., and Brian K. Maxson.

**FEE SUMMARY**

Claimant, Moses Findley, is liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 975.00
Total Fees	= \$ 1,200.00
Less payments	= \$ 1,700.00
Balance Refunded by NASD Dispute Resolution	= \$ 500.00

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

Member Fees	= \$ 3,550.00
Total Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Brian K. Maxson, are jointly and severally liable for:

Forum Fees	= \$ 975.00
Total Fees	= \$ 975.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 975.00

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

**ARBITRATION PANEL**

Hugh R. Kennedy - Public Arbitrator, Presiding Chair  
Andrew G. Young - Public Arbitrator  
Bruce F. Coleman - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Hugh R. Kennedy  
Hugh R. Kennedy  
Public Arbitrator, Presiding Chair

09/12/05  
Signature Date

/s/ Andrew G. Young  
Andrew G. Young  
Public Arbitrator

Signature Date

/s/ Bruce F. Coleman  
Bruce F. Coleman  
Non-Public Arbitrator

09/12/05  
Signature Date

09/16/05  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
 Arbitration No. 03-04964  
 Stipulated Award Page 4 of 4

### FEE SUMMARY

Claimant, Moses Findley, is liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 975.00
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Andrew G. Young - Public Arbitrator

Bruce F. Coleman - Non-Public Arbitrator

Concurring Arbitrators:

Hugh R. Kennedy  
 Public Arbitrator, Presiding Chair

Signature Date

Andrew G. Young  
 Public Arbitrator

Signature Date

Bruce F. Coleman  
 Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution  
 Arbitration No. 03-04954  
 Stipulated Award Page 4 of 4

### FEE SUMMARY

Claimant, Moses Findley, is liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 975.00
Total Fees	= \$ 1,200.00
Less payments	= \$ 1,700.00
Balance Refunded by NASD Dispute Resolution	= \$ 500.00

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

Member Fees	= \$ 3,550.00
Total Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Brian K. Maxson, are jointly and severally liable for:

Forum Fees	= \$ 975.00
Total Fees	= \$ 975.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 975.00

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### ARBITRATION PANEL

Hugh R. Kennedy - Public Arbitrator, Presiding Chair  
 Andrew G. Young - Public Arbitrator  
 Bruce F. Coleman - Non-Public Arbitrator

Concurring Arbitrators:

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 Hugh R. Kennedy  
 Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
 Andrew G. Young  
 Public Arbitrator

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

  
 Bruce F. Coleman  
 Non-Public Arbitrator

9/12/05  
 Signature Date

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

NASD Dispute Resolution  
Arbitration No. 03-04854  
Simplified Award Page 4 of 4

**FEE SUMMARY**

Claimant, Moses Findley, is liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 975.00
Total Fees	= \$ 1,200.00
Less payments	= \$ 1,700.00
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Andrew G. Young - Public Arbitrator

Bruce F. Coleman - Non-Public Arbitrator

Concurring Arbitrators:

  
Hugh R. Kennedy  
Public Arbitrator, Presiding Chair

9.12.5  
Signature Date

\_\_\_\_\_  
Andrew G. Young  
Public Arbitrator

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

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Bruce F. Coleman  
Non-Public Arbitrator

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

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Date of Service (For NASD office use only)