

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

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In the Matter of the Arbitration Between:

Manfred Arens and Margret Arens (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc.  
and Adrian Mahoney (Respondents)

Case Number: 03-05312

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants Manfred Arens ("Manfred Arens") and Margret Arens ("Margret Arens") hereinafter collectively referred to as "Claimants": Wayne N. Josel, Esq., Josel Law, P.C., Mamaroneck, NY. Previously *pro se*.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Adrian Mahoney ("Mahoney") hereinafter collectively referred to as "Respondents": Hugo A. Hilgendorff, IV, Esq., Bressler, Amery & Ross, P.C., Morristown, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: July 21, 2003.

Claimants signed the Uniform Submission Agreement: July 30, 2003.

Joint Statement of Answer filed by Respondents on or about: September 26, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: October 6, 2003.

Respondent Mahoney signed the Uniform Submission Agreement: October 7, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: misrepresentations; fraud; and breach of fiduciary duty. The causes of action relate to shares of Lucent, Internet Capital Group, and Ariba, Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$96,676.74; punitive damages in the amount of \$70,000.00; interest; plus commissions.

Respondents requested that Claimants' Statement of Claim be dismissed with prejudice, in its entirety; costs; and other further relief as they deem just and proper.

Respondents requested that the Statement of Claim be dismissed against all parties with prejudice; that the Arbitrators enter an order expunging or striking this claim from the permanent registration records of Respondent Mahoney maintained by the CRD; costs; and other further relief as they deem just and proper.

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

On or about October 19, 2004, Respondent Mahoney was dismissed with prejudice.

On or about October 20, 2004, NASD Dispute Resolution was notified that the parties settled this matter.

By letter dated January 10, 2005, the parties informed NASD Dispute Resolution that they were requesting a Stipulated Award.

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**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. On October 19, 2004, Respondent Mahoney was dismissed with prejudice.
2. Respondent Merrill Lynch is hereby dismissed with prejudice. Claimants and Respondent Merrill Lynch have entered into a confidential settlement agreement which shall be complied with by the parties.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Adrian Mahoney'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 Adrian Mahoney must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
4. Each party shall bear its own costs and expenses associated with the above-referenced arbitration.

5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

|                          |                     |
|--------------------------|---------------------|
| Member Surcharge         | = \$1,700.00        |
| Pre-Hearing Process Fee  | = \$ 750.00         |
| Hearing Process Fee      | = \$2,750.00        |
| <u>Total Member Fees</u> | <u>= \$5,200.00</u> |

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

The 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. Forum fees associated with these proceedings are:

|  |                     |
|--|---------------------|
| One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session | = \$1,125.00        |
| <u>Pre-hearing conference: January 28, 2004 1 session</u>                  |                     |
| <u>Total Forum Fees</u>  | <u>= \$1,125.00</u> |

1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimants have jointly and severally been assessed \$375.00 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Merrill Lynch has been assessed \$375.00 of the forum fees.
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Mahoney has been assessed \$375.00 of the forum fees.

**Fee Summary**

1. Claimants are jointly and severally liable for:

|                                     |                     |
|-------------------------------------|---------------------|
| Initial Filing Fee                  | = \$ 300.00         |
| <u>Forum Fees</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           |

*Pursuant to Rule 10332(f) of the Code of Arbitration Procedure, NASD is retaining the total amount of the hearing session deposited by the Claimants because this office was notified that the parties settled this matter within eight business days of the first scheduled hearing session.*

2. Respondent Merrill Lynch is solely liable for:

|                                     |                     |
|-------------------------------------|---------------------|
| Member Fees                         | = \$5,200.00        |
| <u>Forum Fees</u>                   | <u>= \$ 375.00</u>  |
| Total Fees                          | = \$5,575.00        |
| <u>Less payments</u>                | <u>= \$5,200.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 375.00         |

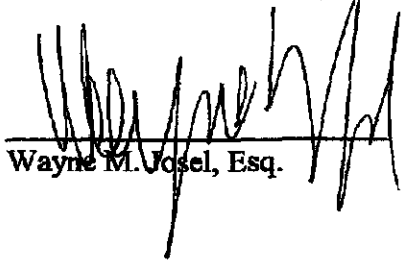
3. Respondent Mahoney is solely liable for:

|                                     |                    |
|-------------------------------------|--------------------|
| <u>Forum Fees</u>                   | <u>= \$ 375.00</u> |
| Total Fees                          | = \$ 375.00        |
| <u>Less payments</u>                | <u>= \$ 0.00</u>   |
| Balance Due NASD Dispute Resolution | = \$ 375.00        |

All balances are due and payable to NASD Dispute Resolution

**Parties' Signature**

KAUFMAN, FEINER, YAMIN, GILDIN & ROBBINS, LLP  
Attorneys for Claimants  
Manfred Arens and Margaret Arens


  
Wayne M. Josel, Esq.

1/7/05  
Signature Date

BRESSLER, AMERY & ROSS, P.C.  
Attorneys for Respondent  
Merrill Lynch, Pierce, Fenner & Smith, Incorporated

  
Dominick F. Evangelista, Esq.

1/10/05  
Signature Date

  
ADRIAN D. MAHONEY, Respondent

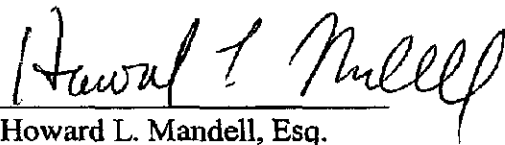
1/13/2005  
Signature Date

**ARBITRATION PANEL**

|                         |   |                                    |
|-------------------------|---|------------------------------------|
| Howard L. Mandell, Esq. | - | Public Arbitrator, Presiding Chair |
| Arnold Limsky           | - | Public Arbitrator                  |
| Herbert Z. Geiger, Esq. | - | Non-Public Arbitrator              |

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.



Howard L. Mandell, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Arnold Limsky  
Public Arbitrator

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

\_\_\_\_\_  
Herbert Z. Geiger, Esq.  
Non-Public Arbitrator

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

February 2, 2005  
Date of Service (For NASD office use only)

ARBITRATION PANEL

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Public Arbitrator

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Herbert Z. Geiger, Esq.  
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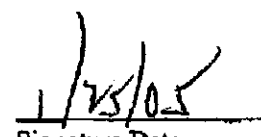
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Public Arbitrator

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