

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

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In the Matter of the Arbitration Between:

Monica Teitelbaum and The Freda Teitelbaum Revocable Trust, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Jeffrey M. Stikes and Arthur J. Matney, Respondents

Case Number: 03-05407

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

Timothy A. Canning, Esq.  
Attorney At Law  
Novato, California

For Respondents:

Benjamin J. Biard, Esq.  
Merrill Lynch  
Miami, Florida

**CASE INFORMATION**

Statement of Claim filed: July 21, 2003

Claimants' Uniform Submission Agreement signed: August 25, 2003

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Jeffrey M. Stikes and Arthur J. Matney: November 17, 2003

Respondent Merrill Lynch's Uniform Submission Agreement signed: November 14, 2003

**CASE SUMMARY**

Claimants alleged the following claims: 1) Fraud; 2) Negligence; 3) Breach of Contract; 4) Breach of Fiduciary Duty; 5) Unsuitable recommendations; 6) Misrepresentation; 7) Failure to Supervise; and 8) Violations of NASD Conduct Rules. Claimants' Claim involved unspecified securities.

Respondents denied all material allegations in the Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested:

1. Compensatory damages in the amount of \$105,000.00 or more, plus interest, according to proof;
2. Attorney's fees and costs;
3. Punitive and exemplary damages; and
4. Trebling the amount of punitive or exemplary damages.

Respondents requested that the Statement of Claim be dismissed as against all parties with prejudice; and that the arbitrators enter an order expunging or striking this claim from Jeffrey M. Stikes' and Arthur J. Matney's permanent registration records maintained by the NASD Central Registration Depository.

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

On October 1, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondents Jeffrey M. Stikes and Arthur J. Matney did not file with NASD Dispute Resolution ("NASD-DR") properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered the Claim are bound by the determination of the Panel on all issues submitted.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

On October 27, 2004, the parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing, and upon motion of Respondents for entry of an award, the written stipulation thereto, the Panel hereby grants the motion and enters this award granting the following relief:

1. The claims against Respondents Merrill Lynch, Pierce, Fenner and Smith Incorporated, Jeffrey M. Stikes and Arthur J. Matney are dismissed with prejudice. Claimants and Respondents Merrill Lynch, Pierce, Fenner and Smith Incorporated, Jeffrey M. Stikes and Arthur J. Matney have entered into a confidential settlement agreement.
2. Claimants stipulate to entry of an award expunging this arbitration and complaint from Jeffrey M. Stikes' and Arthur J. Matney's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that Jeffrey M. Stikes and Arthur J. Matney will obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondents Jeffrey M. Stikes and Arthur J. Matney's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondents, Jeffrey M. Stikes and Arthur J. Matney must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Each party shall bear its own costs, including attorney's fees.
5. All other relief 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	= \$300.00
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#### **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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch is a party and the following fees are assessed:

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

### **Adjournment Fees**

The Panel granted Respondents' request of May 13, 2004, to postpone the May 26-28, 2004, hearing dates and waived the \$1,125.00 postponement fee.

### **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 Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	=	\$450.00
Pre-hearing conference: March 23, 2004	1 session	
(3) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	=	\$3,375.00
Pre-hearing conferences: January 20, 2004	1 session	
June 3, 2004	1 session	
July 26, 2004	1 session	
<hr/> <b>Total Forum Fees</b>		<b>= \$3,825.00</b>

The Panel assessed the \$3,825.00 in forum fees to Respondent Merrill Lynch in accordance with the parties' agreement.

### **Fee Summary**

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

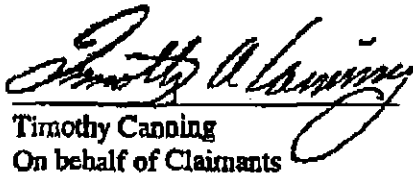
Initial Filing Fee	= \$	300.00
Retained deposit in accordance with Rule 10332(f) of the Code	= \$	1,125.00
<u>Less Payments</u>	= \$(	1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$</b>	<b>0.00</b>

2. Respondent Merrill Lynch is charged with the following fees and costs:

Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	3,825.00
Total Fees	= \$	9,025.00
<u>Less Payments</u>	= \$(	9,025.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$</b>	<b>0.00</b>

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

**PARTIES' SIGNATURES**

  
Timothy Canning  
On behalf of Claimants

Yk/06  
Signature Date

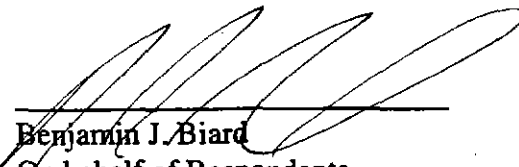
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Benjamin J. Biard  
On behalf of Respondents

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Signature Date

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On behalf of Claimants

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Signature Date

  
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Benjamin J. Biard  
On behalf of Respondents

9.15.05  
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Signature Date

**ARBITRATION PANEL**

David I. Levine, J.D.	-	Public Arbitrator, Presiding Chair
Kenneth W. Gosliner	-	Public Arbitrator
William A. Husa	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



David I. Levine, J.D.  
Chair, Public Arbitrator



Signature Date

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Kenneth W. Gosliner  
Public Arbitrator

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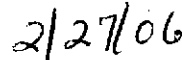
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William A. Husa  
Non-Public Arbitrator

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Signature Date



Date of Service

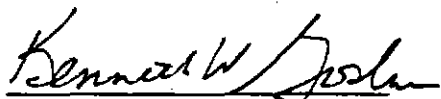
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David I. Levine, J.D  
Chair, Public Arbitrator

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Signature Date



Kenneth W. Gosliner  
Public Arbitrator

1-17-06  
Signature Date

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William A. Husa  
Non-Public Arbitrator

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Signature Date

2/27/06  
Date of Service



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Kenneth W. Gosliner  
Public Arbitrator

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Signature Date

William A. Husa  
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Non-Public Arbitrator

2-~~2~~-16-2006  
Signature Date

2/27/06  
Date of Service