

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

T-Lon Products, Inc.

vs.

Case Number: 03-05512

Hearing Site: Milwaukee, Wisconsin

Names of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,  
Glen W. Ringwall,  
Mark J. Manion, and  
David M. Retkowski

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**NATURE OF CASE**

Customer v. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

T-Lon Products, Inc. ("Claimant") was represented by Emmanuel Mamalakis, Mamalakis Law Offices LLC, Milwaukee, Wisconsin.

Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"), Glen W. Ringwall ("Ringwall"), Mark J. Manion ("Manion") and David M. Retkowski ("Retkowski") hereinafter collectively referred to as "Respondents," were represented by Harry D. Frisch, Esq., Office of General Counsel, New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 28, 2003.

The Uniform Submission Agreement of Claimant was signed on or about July 21, 2003.

The Statement of Answer was filed jointly by Respondents on or about October 10, 2003.

The Uniform Submission Agreements of Respondents Ringwall and Retkowski were signed on or about August 20, 2003.

The Uniform Submission Agreement of Respondent Manion was signed on or about August 15, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; misrepresentations; suitability; failure to supervise; negligence; and breach of contract. Claimant alleged that Respondents made an unsuitable investment recommendation of Merrill Lynch's internet strategy fund.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant has failed to state a claim upon which relief may be granted; the claims are barred in whole or in part by the applicable statutes of limitation; the claims are barred by the defenses of estoppel, waiver and the doctrine of laches; and Claimant has failed to act to mitigate its alleged damages, if any, and therefore the claims for damages are barred of reduced pro tanto.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$70,000.00
Punitive/Exemplary Damages	\$35,000.00
Interest	\$25,000.00
Other Costs	Unspecified
Attorney's Fees	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety, that they be awarded their costs and attorneys' fees and that the panel recommend that all references to this matter be expunged from the CRD records of Glen W. Ringwall, Mark J. Manion and David M. Retkowski.

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

Respondent Merrill Lynch did not file with 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, and appeared and testified at the pre-hearing conference through counsel is bound by the determination of the arbitration panel on all issues submitted.

Respondents and Claimant advised the panel that on or about January 19, 2005, they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed, Stipulated 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 conclusions of law, the undersigned arbitrators order as follows:

- 1.) Claimant's claims, having been withdrawn, are 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 Glen W. Ringwall's, Mark J. Manion's and David M. Retkowski's registration records maintained by the NASD Central Registration Depository ("CRD"); with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Ringwall, Manion and Retkowski 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 denied 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 persons 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	= \$1700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

### 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. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with a single arbitrator x \$450.00	= \$1,350.00
Pre-hearing conferences:	
May 12, 2004	1 session
November 2, 2004	1 session
December 21, 2004	1 session
Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conferences:	
March 29, 2004	1 session
February 16, 2005	1 session
Total Forum Fees	= \$3,600.00

The panel has assessed \$1,800.00 forum fees to T-Lon Products, Inc.

The panel has assessed \$1,800.00 forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc., Glen W. Ringwall, Mark J. Manion, and David M. Retkowski.

### EEE SUMMARY

Claimant, T-Lon Products, Inc., is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$1,800.00
Total Fees	= \$2,100.00
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 675.00

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

<u>Member Fees</u>	= \$5,200.00
Total Fees	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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Arbitration No. 03-05512  
Stipulated Award Page 5 of 5

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Glen W. Ringwall, Mark J. Manion, and David M. Retkowski, are jointly and severally liable for:

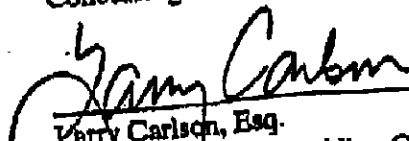
Forum Fees	= \$1,800.00
Total Fees	= \$1,800.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,800.00

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

**ARBITRATION PANEL**

Larry Carlson, Esq. - Public Arbitrator, Presiding Chair  
Thomas R. Riek - Public Arbitrator  
Ramona V. Larson - Non-Public Arbitrator

Concurring Arbitrators:

  
Larry Carlson, Esq.  
Public Arbitrator, Presiding Chair

12 April 05  
Signature Date

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Thomas R. Riek  
Public Arbitrator

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

\_\_\_\_\_  
Ramona V. Larson  
Non-Public Arbitrator

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

4/15/05  
Date of Service (For NASD office use only)

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Arbitration No. 03-05512  
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Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Glen W. Ringwall, Mark J. Marion, and David M. Retkowski, are jointly and severally liable for:

Forum Fees	= \$1,800.00
Total Fees	= \$1,800.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,800.00

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

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Thomas R. Riek - Public Arbitrator  
Ramona V. Larson - Non-Public Arbitrator

Concurring Arbitrators:

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Public Arbitrator, Presiding Chair

Thomas R. Riek  
Thomas R. Riek  
Public Arbitrator

Ramona V. Larson  
Ramona V. Larson  
Non-Public Arbitrator

Date of Service (For NASD office use only)

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Signature Date

4-12-05  
Signature Date

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Signature Date

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NASD

NASD Dispute Resolution  
Arbitration No. 03-03312  
Stipulated Award Page 5 of 5

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., Glen W. Ringwall, Mark J. Marion, and David M. Retkowski, are jointly and severally liable for:

Forum Fees	= \$1,800.00
Total Fees	= \$1,800.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,800.00

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

**ARBITRATION PANEL**

Larry Carlson, Esq. - Public Arbitrator, Presiding Chair  
Thomas R. Riek - Public Arbitrator  
Ramona V. Larson - Non-Public Arbitrator

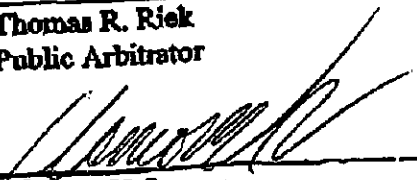
Concurring Arbitrators:

\_\_\_\_\_  
Larry Carlson, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Thomas R. Riek  
Public Arbitrator

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Signature Date

  
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Ramona V. Larson  
Non-Public Arbitrator

4/14/05  
Signature Date

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Date of Service (For NASD office use only)