

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of Claimants

Walter E. Cubberly, III and
Rebecca D. Cubberly

vs.

Case Number: 03-05585
Hearing Site: Houston, Texas

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith Inc.
and John B. Zodrow

NATURE OF DISPUTE

Customers v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Walter E. Cubberly, III and Rebecca D. Cubberly ("Claimants") were represented by Leonard J. Meyer, Esq., Zimmerman, Axelrad, Meyer, Stern & Wise, Houston, Texas.

Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") and John B. Zodrow ("Zodrow") hereinafter collectively referred as ("Respondents") were represented by Jack D. Ballard, Esq., The Ballard Law Firm, Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about: July 30, 2003. The Uniform Submission Agreements were filed by Claimants on or about July 17, 2003.

The Joint Statement of Answer was filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and John Zodrow, on or about October 23, 2003. The Uniform Submission Agreement of Merrill Lynch was filed on or about September 22, 2003. The Uniform Submission Agreement of Zodrow was filed on or about October 27, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitability, misrepresentations, omissions, failure to supervise, fraud and breach of fiduciary duty. The causes of action relate to various transactions in Claimants' accounts at Merrill Lynch.

Respondents, Merrill Lynch and Zodrow, denied the allegations made in the Statement of Claim and asserted defenses including the following: to the extent Claimants incurred any damages, such damages were attributable to market conditions and not to any acts or omissions of Respondents; estoppel; waiver; ratification; commercial reasonableness; assumption of risks; the applicable statutes of limitations, compliance with Exchange rules and regulations; laches; failure to mitigate; contributory negligence; and an award of punitive or exemplary damages would be in violation of the United States and Texas Constitutions.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

Actual/Compensatory Damages	\$1,104,948.00
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorney's Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted be denied and dismissed in their entirety and that an award recommending an expungement of the claims asserted against Zodrow be entered by the panel.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 24, 2004, Claimants and Respondents reached an agreement to settle the claims asserted in the arbitration proceeding, and each of the Respondents and Claimants have executed a General Release and Settlement Agreement.

Claimants and Respondents have agreed that all disputes between them are fully and finally resolved.

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 remains on file with the 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 orders as follows:

1. Claimants' claims against Respondents, Merrill Lynch and Zodrow, are hereby dismissed with prejudice;
2. The panel recommends the expungement of all reference to the above captioned arbitration from Respondent, John B. Zodrow's, registration records maintained by the NASD Central Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Zodrow 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	= \$ 500.00
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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. Merrill Lynch, Pierce, Fenner & Smith, Inc. is a member firm.

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

September 29-30, 2004, settled jointly by the parties (canceled pursuant to the parties' September 24, 2004 settlement notice)	= \$ 300.00
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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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @ \$ 1,200.00	= \$ 1,200.00
Pre-hearing conference: March 2, 2004 1 session	

One (1) Hearing session @ \$1,200.00 with the Panel	= \$ 1,200.00
Hearing: September 28, 2004 1 session	

Total Forum Fees	= \$ 2,400.00
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The panel has assessed \$1,200.00 of the forum fees jointly and severally to Claimants.

The panel has assessed \$1,200.00 of the forum fees jointly and severally to Respondents, Merrill Lynch and Zodrow.

Fee Summary

Claimants, Walter E. Cubberly, III and Rebecca D. Cubberly, are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Three-Day Cancellation Fee	= \$ 100.00
Forum Fee	= \$1,200.00
Total Fees	= \$1,800.00
Less payments	= \$1,800.00
Balance Due NASD Dispute Resolution	= \$ 100.00

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

Member Fees	= \$8,550.00
Three-Day Cancellation Fee	= \$ 100.00
Total Fees	= \$8,650.00
Less payments	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 100.00

Respondent, John B. Zodrow, is liable for:

Three-Day Cancellation Fee	= \$ 100.00
Total Fees	= \$ 100.00
Less Payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 100.00

Respondents, Merrill Lynch, Pierce, Fenner & Smith Incorporated and John B. Zodrow, are jointly and severally liable for:

Forum Fees	= \$1,200.00
Total Fees	= \$1,200.00
Less Payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,200.00

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

ARBITRATION PANEL

Lynne M. Gomez, Esq. - Public Arbitrator, Presiding Chairperson
Charles S. Chester - Public Arbitrator
Charles E. Martin - Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Lynne M. Gomez, Esq.
Lynne M. Gomez, Esq.
Public Arbitrator, Presiding Chairperson

October 1, 2004
Signature Date

/s/ Charles S. Chester
Charles S. Chester
Public Arbitrator

October 1, 2004
Signature Date

/s/ Charles E. Martin
Charles E. Martin
Non-Public Arbitrator

October 1, 2004
Signature Date


October 5, 2004
Date of Service (For NASD office use only)

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Lynne M. Gomez, Esq.
Public Arbitrator, Presiding Chairperson

10-1-04
Signature Date

Charles S. Chester
Public Arbitrator

Signature Date

Charles E. Martin
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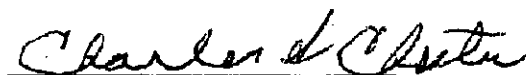
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Public Arbitrator, Presiding Chairperson

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Charles S. Chester
Public Arbitrator



Signature Date

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Charles E. Martin
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