

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

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In the Matter of the Arbitration Between:

Lucy Balestri (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kurt Grimmelmann (Respondents)

Case Number: 03-06098

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Lucy Balestri ("Balestri") hereinafter referred to as "Claimant": John J. Blanchard, Esq., Montvale, NJ.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Kurt Grimmelmann ("Grimmelmann") hereinafter collectively referred to as "Respondents": Frank Cuccio, Esq. and Christopher M. Galusha, Esq., Bressler, Amery & Ross, P.C., Morristown, NJ. Previously represented by: Daniel E. Glatter, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: August 20, 2003.

Response to Request for More Definite Statement filed by Claimant on or about: March 3, 2004.

Claimant signed the Uniform Submission Agreement: August 11, 2003.

Joint Statement of Answer and Motion for a More Definite Statement of Claim filed by Respondents on or about: December 18, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: December 15, 2003.

Respondent Grimmelmann signed the Uniform Submission Agreement: November 24, 2003 and February 4, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of the Securities Exchange Act of 1934, NASD rules and regulations; unauthorized trading; negligence; and failure to supervise. The causes of action relate to unspecified securities.

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**

Claimant requested compensatory damages; interest; and attorneys' fees and costs.

Respondents requested that the Statement of Claim be denied in all respects, that Respondents' motion be granted, that the Claimant be ordered to pay all fees and costs in connection with the arbitration, together with such other and further relief as is deemed just and proper. Additionally, Respondents requested that all references to this matter be expunged from the registration records of Respondent Grimmelmnn.

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

On or about November 15, 2004, Claimant notified NASD Dispute Resolution that the parties settled this matter and requested the entry of this 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**

On November 15, 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 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. Claimant's claims against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kurt Grimmelmnn are dismissed in their entirety and with prejudice. Claimant and Respondents have entered into a confidential settlement agreement.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kurt Grimmelmnn'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 Kurt Grimmelmnn must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Each party shall bear its own costs and expenses associated with the above-referenced arbitration. Respondents will bear the costs associated with the filing of the state court action to confirm this award.
4. Any and all relief not specifically addressed herein 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 = \$ 250.00

#### **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	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,200.00
Total Member Fees	= \$4,450.00

#### **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:

November 16, 17, 2004, settled by parties	= \$ 300.00
Claimant's share	= \$100.00
Respondent Merrill Lynch's share	= \$100.00
Respondent Grimmelmanns' share	= \$100.00

#### **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. Forum fees associated with these proceedings are:

Three (3) Pre-hearing conference sessions with the Panel @ \$1,000.00/session	= \$3,000.00
Pre-hearing conferences:	
May 3, 2004	1 session
July 30, 2004	1 session
October 1, 2004	1 session
Total Forum Fees	= \$3,000.00

1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimant has been assessed \$1,000.00 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Merrill Lynch has been assessed \$1,000.00 of the forum fees.

3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Grimmelmann has been assessed \$1,000.00 of the forum fees.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 250.00
Three Day Cancellation Fee	= \$ 100.00
Forum Fees	= \$1,000.00
Total Fees	= \$1,350.00
<u>Less payments</u>	<u>= \$1,250.00</u>
Balance Due NASD Dispute Resolution	= \$ 100.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$4,450.00
Three Day Cancellation Fee	= \$ 100.00
Forum Fees	= \$1,000.00
Total Fees	= \$5,550.00
<u>Less payments</u>	<u>= \$4,450.00</u>
Balance Due NASD Dispute Resolution	= \$1,100.00

3. Respondent Grimmelmann is solely liable for:

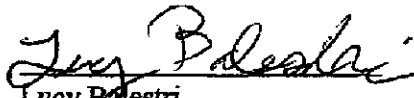
Three Day Cancellation Fee	= \$ 100.00
Forum Fees	= \$1,000.00
Total Fees	= \$1,100.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$1,100.00

All balances are due and payable to NASD Dispute Resolution

NASD Dispute Resolution  
Arbitration No. 03-06098  
Award Page 5 of 6

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**Parties' Signatures**

  
Lucy Bolestri  
Claimant

  
Signature Date

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Merrill Lynch, Pierce,  
Fenner & Smith, Incorporated  
Respondent

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Signature Date

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Kurt Grimmelmann  
Respondent

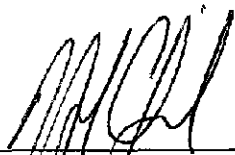
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Signature Date

**Parties' Signatures**

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Lucy Balestri  
Claimant



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Merrill Lynch, Pierce,  
Fenner & Smith, Incorporated  
Respondent

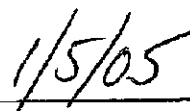


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Kurt Grimmelmann  
Respondent

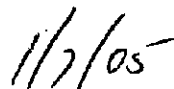
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Signature Date



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Signature Date



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Signature Date

**ARBITRATION PANEL**

Irwin Kahn, Esq.	-	Public Arbitrator, Presiding Chair
Richard D. DeKoster	-	Public Arbitrator
Christopher C. Gorski, 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.

  
Irwin Kahn, Esq.  
Public Arbitrator, Presiding Chair

1/7/05  
Signature Date

\_\_\_\_\_  
Richard D. DeKoster  
Public Arbitrator

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

\_\_\_\_\_  
Christopher C. Gorski, Esq.  
Non-Public Arbitrator

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

\_\_\_\_\_  
February 11, 2005  
Date of Service (For NASD office use only)

ARBITRATION PANEL

Irwin Kahn, Esq.	-	Public Arbitrator, Presiding Chair
Richard D. DeKoster	-	Public Arbitrator
Christopher C. Gorski, 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.

\_\_\_\_\_  
Irwin Kahn, Esq.  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Richard D. DeKoster  
Public Arbitrator

1/06/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Christopher C. Gorski, Esq.  
Non-Public Arbitrator

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

February 11, 2005  
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