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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Charlotte Levine

Case Number: 03-06316

Names of the Respondents  
Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Daren W. Pingleton  
Peter H. Silcox  
Jennifer A. Payne  
Albert Wester  
Nancy J. Katz

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Charlotte Levine, hereinafter referred to as "Claimant": Michael B. Lynch, Esq., Hooper & Weiss, LLC, Orlando, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), Daren W. Pingleton ("Pingleton"), Peter H. Silcox ("Silcox"), Jennifer A. Payne ("Payne"), Albert Wester ("Wester") and Nancy J. Katz ("Katz"), hereinafter collectively referred to as "Respondents": Matthew N. Thibaut, Esq., Boose Casey Ciklin Lubitz Martens McBane & O'Connell, West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: August 28, 2003.

Claimant signed the Uniform Submission Agreement: August 12, 2003.

Statement of Answer, Motion to Dismiss and Affirmative Defenses filed by Respondents on or about: December 8, 2003.

Respondent MLPFS signed the Uniform Submission Agreement: December 5, 2003.

Respondent Pingleton signed the Uniform Submission Agreement: December 9, 2003.

Respondent Silcox signed the Uniform Submission Agreement: October 22, 2003.

Respondent Payne signed the Uniform Submission Agreement: November 25, 2003.

Respondent Wester signed the Uniform Submission Agreement: October 24, 2003.

Respondent Katz signed the Uniform Submission Agreement: November 24, 2003.

### **CASE SUMMARY**

Claimant alleged the following causes of action: 1) breach of fiduciary duty; 2) violation of Blue Sky laws; 3) negligence; 4) negligent supervision; 5) negligent misrepresentation; and 6) fraud. The causes of action relate to investments in shares of stock, including but not limited to, America Online, Cisco, WorldCom and Sun Microsystems.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$148,806.09; 2) punitive damages; 3) interest; 4) costs; 5) attorneys' fees; and 6) such other damages as the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested: 1) the Claimants' Statement of Claim be dismissed; and 2) the Panel expunge the NASD Central Registration Depository ("CRD") records of Respondents Pingleton, Silcox, Payne, Wester and Katz.

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

On or about February 11, 2004, Claimant filed with NASD Dispute Resolution a voluntary dismissal, with prejudice, of Respondents Pingleton, Silcox, Wester and Katz.

On or about December 29, 2004, Claimant notified NASD Dispute Resolution that the parties had reached a settlement agreement.

On or about February 8, 2005, the parties submitted a proposed Stipulated Award.

This matter involved disputed claims and was settled by the parties prior to the submission of any evidence by any party and prior to the final arbitration hearing. No evidence was ever submitted to this Panel by any party of any wrongdoing by Respondents. Accordingly, the parties agreed that all references to this arbitration proceeding shall be expunged from the NASD CRD records of Respondents Pingleton, Silcox, Payne, Wester and Katz.

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 NASD.

### **AWARD**

After considering the pleadings and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's withdrawal of her claims against Respondents with prejudice is accepted and Respondents are dismissed from this matter.
2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Pingleton's, Silcox's, Payne's, Wester's and Katz's public and non-public registration records maintained by NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Pingleton, Silcox, Payne, Wester and Katz must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD 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. Accordingly, Respondent MLPFS is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Forum Fees	= \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

#### **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:

There were no three-day cancellation fees assessed during these proceedings.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required

to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with the Panel @ \$1,125.00 per session	= \$1,125.00
Pre-hearing conference: March 2, 2004 1 session	

Total Forum Fees	= \$1,125.00
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The Panel has assessed forum fees in the amount of \$562.50 to Claimant.

The Panel has assessed forum fees in the amount of \$562.50 to Respondents MLPFS and Payne, jointly and severally.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code	= \$ 562.50
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$1,425.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS and Respondent Payne are jointly and severally liable for:

Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

Respondent MLPFS is solely liable for:

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

**ARBITRATION PANEL**

<i>Peter H. Barber, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Paul J. Carey</i>	-	<i>Public Arbitrator</i>
<i>R. Peter Olin</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

/s/  
Peter H. Barber, Esq.  
Public Arbitrator, Presiding Chairperson

April 4, 2005  
Signature Date

/s/  
Paul J. Carey  
Public Arbitrator

March 28, 2005  
Signature Date

/s/  
R. Peter Olin  
Non-Public Arbitrator

March 28, 2005  
Signature Date

April 4, 2005  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 03-06316  
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Respondent MLPFS is solely liable for:

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

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*Peter H. Barber, Esq.*

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*Public Arbitrator, Presiding Chairperson*

*Paul J. Carey*

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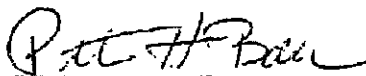
*Public Arbitrator*

*R. Peter Olin*

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*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**



Peter H. Barber, Esq.  
Public Arbitrator, Presiding Chairperson

4.4.05

Signature Date

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Paul J. Carey  
Public Arbitrator

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

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Peter H. Barber, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Paul J. Carey  
Paul J. Carey  
Public Arbitrator

3/28/05  
Signature Date

R. Peter Olin  
Non-Public Arbitrator

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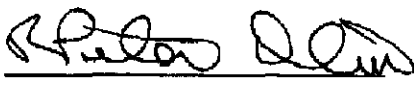
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