

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

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In the Matter of the Arbitration Between:

Robert Pliskin, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Daniel A. Fuller, Respondents

Case Number: 03-06336

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Carol A. Gefis, Esq.  
Oswald & Yap  
Irvine, California

For Respondents:

Eric J. Glassman, Esq.  
Mennemeier, Glassman & Stroud LLP  
Sacramento, California

**CASE INFORMATION**

Statement of Claim filed: August 26, 2003

Claimant's Uniform Submission Agreement signed: August 25, 2003

Joint Statement of Answer filed by Respondents: November 25, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed: October 20, 2003

Respondent Daniel A. Fuller's Uniform Submission Agreement signed: November 21, 2003

**CASE SUMMARY**

Claimant alleged negligence, fraud, misrepresentations, negligent misrepresentation, breach of fiduciary duty, breach of contract, constructive fraud, and failure to supervise. Claimant's claims involved securities including stock in Global Crossing, Ltd., Homestore.com, Inc., and Exodus Communications, Inc.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested \$700,000.00 in compensatory damages, unspecified punitive damages, and costs, including attorney's fees and expert fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and expungement of any reference to this matter from the regulatory record of Daniel A. Fuller.

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

On November 2, 2003, Claimant and Claimant's 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 Claimant 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.

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**

After considering the pleadings and the Parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Each and every one of the Claimant's claims against the Respondents is hereby dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Daniel A. Fuller's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Daniel A. Fuller must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Merrill Lynch, Pierce, Fenner & Smith Incorporated shall bear any additional costs or fees assessed by the NASD in connection with any proceedings that occur in connection with this Stipulation or in connection with Merrill Lynch, Pierce, Fenner & Smith Incorporated's effort to obtain expungement of this matter from Daniel A. Fuller's CRD records.
4. 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	= \$ 375.00
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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 which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 4,000.00
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

March 8-11, 2005 hearing adjournment requested by parties	= \$ waived
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#### **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 Panel. The following fees are assessed:

3 Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 3,600.00
Pre-hearing conferences:	
February 18, 2004	1 session
August 2, 2004	1 session
August 24, 2005	1 session
<b>Total Forum Fees</b>	<b>= \$ 3,600.00</b>

1. The Panel assessed \$600.00 of the forum fees to Claimant.
2. The Panel assessed \$1,200.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated.

3. The Panel assessed \$600.00 of the forum fees jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and Daniel A. Fuller.
4. The Panel waived \$1,200.00 of the forum fees.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 975.00
Less payments	= \$(1,575.00)
<b>Refund Due Claimant</b>	<b>= \$( 600.00)</b>

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 8,200.00
Less payments	= \$(7,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,200.00</b>

3. Respondents are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 600.00
Less payments	= \$( 0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 600.00</b>

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

**ARBITRATION PANEL**

David J. Berardo	-	Public Arbitrator, Presiding Chair
Joan Clay Manley	-	Public Arbitrator
Carol Jeanne Medof	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
David J. Berardo  
Chair, Public Arbitrator

8/31/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Joan Clay Manley  
Public Arbitrator

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

\_\_\_\_\_  
Carol Jeanne Medof  
Non-Public Arbitrator

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

9/1/05  
\_\_\_\_\_  
Date of Service

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Joan Clay Manley	-	Public Arbitrator
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David J. Berardo  
Chair, Public Arbitrator

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Signature Date

  
Joan Clay Manley  
Public Arbitrator

08/26/05  
Signature Date

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Carol Jeanne Medof  
Non-Public Arbitrator

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

9/1/05  
Date of Service

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Public Arbitrator

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Signature Date

Carol J. Medof  
Carol Jeanne Medof  
Non-Public Arbitrator

8-31-05  
Signature Date

9/1/05  
Date of Service