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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Mildred Soret

Case Number: 03-09181

Name of the Respondent  
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, FL

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Mildred Soret ("Soret"), hereinafter referred to as "Claimant": Scott J. Link, Esq.,  
Ackerman, Link & Sartory, P.A., West Palm Beach, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), hereinafter referred to as  
"Respondent": Richard L. Martens, Esq. and 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: December 23, 2003.

Claimant signed the Uniform Submission Agreement: December 23, 2003.

Statement of Answer filed by Respondent on or about: March 10, 2004.

Respondent MLPFS signed the Uniform Submission Agreement: January 15, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) negligence; 3) breach of contract; 4) negligent supervision; and 5) violations of Florida Statutes, Chapter 517. The causes of action relate to purchase of mutual funds in Alliance Premier Growth; Consecro 20 Fund; Mass Investors Growth Fund; MFS Emerging Growth Fund; Pioneer Growth Shares Putnam Investors Funds; and Putnam New Opportunities Fund.

Respondent denied Claimant's allegations, and denied any liability for any alleged monetary damages.

**RELIEF REQUESTED**

Claimant requested compensatory damages of \$260,000.00, plus interest, costs, attorneys' fees pursuant to Section 517.211, Florida Statutes and such other relief as is deemed fair and appropriate.

Respondent requested that the Statement of Claim be dismissed in its entirety, and that all costs be assessed against Claimant.

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

Prior to the filing of the Statement of Claim in this matter, Claimant's counsel served a letter complaint ("complaint") upon Respondent MLPFS and, based on the nature of the allegations contained in the complaint, Respondent MLPFS filed the necessary disclosures on the Central Registration Depository ("CRD") record of Respondent MLPFS employee non-party Aleksander Acimovic ("Acimovic").

However, 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. As such, no evidence was submitted to the undersigned arbitrators (the "Panel") demonstrating that Acimovic was involved in the wrongdoing alleged in the pleadings. Accordingly, the parties requested that all references to this arbitration proceeding be expunged from the NASD CRD records of Acimovic.

On or about July 29, 2004, Respondent's counsel advised NASD Dispute Resolution that the parties intended to submit a Stipulated Award and requested that the file remain open until these documents were submitted.

On or about July 30, 2004, Claimant's counsel advised NASD Dispute Resolution that the parties had settled the arbitration proceeding.

On or about August 16, 2004, the parties submitted a proposed Stipulated Award for execution by the arbitration panel that requested that this matter be expunged from the registration records of non-party Acimovic maintained by NASD CRD.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **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 Respondent, with prejudice, is accepted and Respondent is dismissed from this matter.
2. The Panel recommends the expungement of all references to the above-captioned arbitration from non-party Acimovic'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, non-party Acimovic 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 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 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 Member Fees	= \$5,200.00

#### **Adjournment Fees**

No adjournment fees were incurred during these proceedings.

#### **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.

No three-day cancellation fees were incurred 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.

No injunctive relief fees were incurred 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	= \$1,125.00
Pre-hearing conference: May 25, 2004	1 session
<hr/> Total Forum Fees	<hr/> = \$1,125.00

The Panel has assessed forum fees of \$562.50 to Claimant.  
The Panel has assessed forum fees of \$562.50 to Respondent.

**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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

Forum Fees	= \$ 562.50
Member Fees	= \$5,200.00
Total Fees	= \$5,762.50
Less payments	= \$5,762.50
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Robert T. Allen, Jr.	-	Public Arbitrator, Presiding Chairperson
Stuart Bruce Klein, Esq.	-	Public Arbitrator
R. Peter Olin	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/  
Robert T. Allen, Jr.  
Public Arbitrator, Presiding Chairperson

December 5, 2004  
Signature Date

\_\_\_\_\_/s/  
Stuart Bruce Klein, Esq.  
Public Arbitrator

December 3, 2004  
Signature Date

/s/  
R. Peter Olin  
Non-Public Arbitrator

December 3, 2004  
Signature Date

December 8, 2004  
Date of Service (For NASD Dispute Resolution office use only)

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Robert Peter Olin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Robert T. Allen, Jr.  
Public Arbitrator, Presiding Chairperson

12-5-2004  
Signature Date

\_\_\_\_\_  
Stuart Bruce Klein, Esq.  
Public Arbitrator

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

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Stuart Bruce Klein, Esq.	-	Public Arbitrator
R. Peter Olin	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Robert T. Allen, Jr.  
Public Arbitrator, Presiding Chairperson

  
Stuart Bruce Klein, Esq.  
Public Arbitrator

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

12/03/04  
Signature Date

