

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

**Names of Claimants**

Olin Edward Gates and Suzanne P. Gates

and

Case Number: 04-00099  
Hearing Site: Houston, Texas

**Names of Respondents**

Merrill Lynch, Pierce, Fenner & Smith, Inc.,  
Thomas Wayne Dunn,  
Christel Kuberg Dunn and  
Jason Paul Demers

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**NATURE OF DISPUTE**

Customers v. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

Olin Edward Gates and Suzanne P. Gates ("**Claimants**") were represented by Mark C. Watler, Esq., Ross, Banks, May, Cron & Cavin, P.C., and David B. Mantor, Esq., Ellis, Carstarphen, Dougherty and Goldenthal, P.C., Houston, Texas.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("**Merrill Lynch**"), Thomas Wayne Dunn ("**T. Dunn**"), Christel Kuberg Dunn ("**C. Dunn**"), and Jason Paul Demers, ("**Demers**"), hereinafter collectively referred to as "**Respondents**," were represented by Yasmin Islam Atasi, Esq., and John Kincade, Esq., Winstead, Sechrest & Minnick, Houston, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 2, 2004. The Uniform Submission Agreements of Claimants, Olin Edward Gates and Suzanne P. Gates, were signed on or about December 24, 2003.

The Joint Statement of Answer was filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Thomas Wayne Dunn, Christel Kuberg Dunn and Jason Paul Demers, on or about March 22, 2004. The Uniform Submission Agreement of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., was signed on or about February 5, 2004.

The Uniform Submission Agreement of Respondent, Thomas Wayne Dunn, was signed on or about February 12, 2004. The Uniform Submission Agreements of Respondents, Christel Kuberg Dunn And Jason Paul Demers, were signed on or about March 15, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: misrepresentations, omissions, and breach of fiduciary duty. The causes of action related to investments held in Claimants' accounts at Merrill Lynch, Pierce, Fenner & Smith, Inc.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Thomas Wayne Dunn, Christel Kuberg Dunn, and Jason Paul Demers, denied the allegations made in the Statement of Claim and asserted defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; the Statement of Claim failed to particularize facts establishing a legal theory under which Respondents could be held liable for any damages; Claimants' claims are barred in whole or in part by reason of their contributory and/or comparative negligence; and Claimants' claims are barred by the applicable statutes of limitations.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$332,427.54
Punitive/Exemplary Damages	\$997,282.62
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondents, Thomas Wayne Dunn, Christel Kuberg Dunn and Jason Paul Demers, requested expungement of all reference to this matter from their CRD's.

### **OTHER ISSUES CONSIDERED & DECIDED**

During the hearing of this matter, Claimants and Respondents announced that they had reached a confidential settlement agreement of this matter, and they have agreed to this stipulated award.

The parties have agreed that the Stipulated 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(s) remain on file with 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 order as follows:

- 1.) Claimants' claims against Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Thomas Wayne Dunn, Christel Kuberg Dunn, and Jason Paul Demers, are dismissed with prejudice;
- 2.) The panel recommends the expungement of all references to the above captioned arbitration from Respondent, Thomas Wayne Dunn's, registration record maintained by NASD Central Depository ("CRD"), with the understanding that pursuant to NASD Notice to Member 99-09 and 99-54, Respondent, Thomas Wayne Dunn, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 3.) The panel recommends the expungement of all references to the above captioned arbitration from Respondent, Christel Kuberg Dunn's, registration record maintained by NASD Central Depository ("CRD"), with the understanding that pursuant to NASD Notice to Member 99-09 and 99-54, Respondent, Christel Kuberg Dunn, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 4.) The panel recommends the expungement of all references to the above captioned arbitration from Respondent, Jason Paul Demer's, registration record maintained by NASD Central Depository ("CRD"), with the understanding that pursuant to NASD Notice to Member 99-09 and 99-54, Respondent, Jason Paul Demer, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 5.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 6.) 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

### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Merrill Lynch, Pierce, Fenner & Smith, Inc.

Member surcharge = \$2,800.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$5,000.00

### **Adjournment Fees**

Adjournments granted during these proceedings:

January 10-14, 2005, adjournment requested by Merrill Lynch = \$1,200.00

### **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:

March 17 – March 18, 2005, settled by parties = \$ 300.00

### **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. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00

Pre-hearing conference: November 10, 2004 1 session

Three (3) Pre-hearing sessions with Panel x \$1,200.00 = \$3,600.00

Pre-hearing conferences: May 21, 2004 1 session  
December 10, 2004 1 session  
December 15, 2004 1 session

Six (6) Hearing sessions x \$1,200.00 = \$7,200.00

Hearing Dates: March 14, 2005 2 sessions  
March 15, 2005 2 sessions  
March 16, 2005 2 sessions

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Total Forum Fees = \$11,250.00

The Arbitration Panel has assessed \$11,250.00 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith, Inc.

#### Fee Summary

Claimants, Olin Edward Gates and Suzanne P. Gates, are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 1,700.00
Refund to Claimants	= \$ 1,200.00

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

Member Fees	= \$ 8,550.00
Adjournment Fee	= \$ 1,200.00
Three Day Cancellation Fee	= \$ 300.00
Forum Fees	= \$11,250.00
Total Fees	= \$21,300.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$12,750.00

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

**ARBITRATION PANEL**

James A. Parker - Public Arbitrator, Presiding Chair  
Irwin S. Sugerman - Public Arbitrator  
Walter F. Schleyer - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ James A. Parker  
James A. Parker  
Public Arbitrator, Presiding Chair

March 31, 2005  
Signature Date

/s/ Irwin S. Sugerman  
Irwin S. Sugerman  
Public Arbitrator

March 31, 2005  
Signature Date

/s/ Walter F. Schleyer  
Walter F. Schleyer  
Non-Public Arbitrator

March 31, 2005  
Signature Date

March 31, 2005  
Date of Service (For NASD office use only)

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Public Arbitrator, Presiding Chair

3/31/05  
Signature Date

Irwin S. Sugerman  
Irwin S. Sugerman  
Public Arbitrator

Signature Date

Walter F. Schleyer  
Walter F. Schleyer  
Non-Public Arbitrator

Signature Date

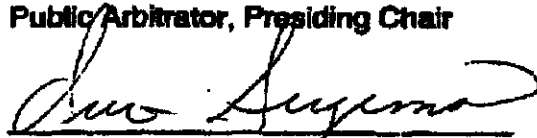
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