

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

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In the Matter of the Arbitration Between:

Charles G. Paddock, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Ronald H. Kabot, Respondents

Case Number: 04-00100

Hearing Site: San Diego, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

William S. Bonnheim, Esq.  
William S. Bonnheim, PLC  
Palm Desert, California

For Respondents:

James P. Delphey, Esq.  
Seltzer Caplan McMahon Vitek  
San Diego, California

**CASE INFORMATION**

Statement of Claim filed: January 5, 2004

Claimant's Uniform Submission Agreement signed: November 4, 2003

Joint Statement of Answer filed by Respondents: March 1, 2004

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement signed: February 4, 2004

Respondent Ronald H. Kabot's Uniform Submission Agreement signed: February 26, 2004

**CASE SUMMARY**

Claimant alleged wrongful conduct, breach of fiduciary duty, constructive fraud, failure to supervise, violation of federal and state securities laws and NASD Rules of Fair Practice and NYSE rules. The dispute involved the purchase and/or sale of unspecified securities.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$123,000.00, all profits Respondents generated from Claimant's account in an unspecified amount but not less than the total commission and fees generated in all unsuitable transactions Respondents executed for Claimant, interest, rescission, lost opportunity costs, attorney's fees, and arbitration costs.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees. Additionally, Respondent Ronald H. Kabot requested that the arbitrators order this claim be expunged from his regulatory records.

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

On January 16, 2004, 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.

On November 15, 2004, NASD Dispute Resolution received notice of settlement and dismissal with prejudice against Respondent Ronald H. Kabot.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **STIPULATION**

All parties which have appeared in this arbitration stipulate as follows:

Whereas, Claimant Charles G. Paddock ("Claimant") in December 2003 brought certain claims against Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Ronald H. Kabot ("Mr. Kabot") (collectively "Respondents") before NASD Dispute Resolution, Inc. for arbitration and resolution, and those claims were denominated NASD Arbitration No. 04-00100;

Whereas, as set forth in the Statement of Answer, Respondents have denied and continue to deny Claimant's claims;

Whereas, the Parties wish to avoid the costs associated with hearings in this matter;

Whereas, Respondent Merrill Lynch and Claimant have entered into a Confidential Settlement Agreement and General Release ("the Settlement Agreement") regarding Claimant's claims;

Whereas, pursuant to the terms of their settlement, Claimant has agreed and undertaken to dismiss with prejudice all claims asserted in this arbitration;

Whereas Mr. Kabot did not make any monetary contribution to the settlement;

Whereas, Claimant agrees that his claims against Respondent Kabot should be expunged from his Forms U-4, U-5 and any other securities industry regulatory report or reporting documents pertaining to him;

Whereas, Claimant's agreement that his claims against Respondent Kabot should be expunged from his regulatory record, was a material inducement to the settlement of this case;

THEREFORE, based on these premises and agreements, Claimant and Respondents, hereby stipulate to, and jointly request the arbitrators' approval of, the following orders to be entered as their award in this case:

1. The arbitration denominated Charles G. Paddock v. Merrill Lynch, Pierce, Fenner & Smith, et al., NASD No. 04-00100 is dismissed with prejudice.
2. The arbitrators recommend and direct that all references to the claims made by the Claimant be expunged from the records of Respondent Ronald H. Kabot maintained by the NASD in its Central Registration Depository, (CRD), with the understanding that, pursuant to NASD Notice to Members 99-09, NASD Regulation will not execute the expungement directive until the arbitration award is confirmed by a court of competent jurisdiction.
3. Merrill Lynch shall bear any costs or fees in connection with any court proceedings that occur to obtain such expungement.

### **AWARD**

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

- 1) Claimant's claims are dismissed with prejudice.
- 2) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Ronald H. Kabot'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 Ronald H. Kabot must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) Merrill Lynch, Pierce, Fenner & Smith, Inc. shall bear any costs or fees in connection with any court proceedings that occur to obtain such expungement.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure ("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	= \$ 300.00
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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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

**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 Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: May 11, 2004 1 session	

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<b>Total Forum Fees</b>	<b>= \$ 1,125.00</b>
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1. The Panel assessed \$562.50 of the forum fees to Claimant.
2. The Panel assessed \$562.50 of the forum fees jointly and severally to Respondents..

**Three-Day Cancellation Fees**

Three-day cancellation fees apply when a hearing on the merits is postponed or settled within three business days before the start of the first scheduled hearing session. The following three-day cancellation fees are assessed:

Cancellation of November 17 – 19, 2004 hearings dates:	= \$ 300.00
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1. The Panel assessed \$150.00 of the three-day cancellation fee to Claimant.
2. The Panel assessed \$150.00 of the three-day cancellation fee jointly and severally to Respondents.

**Fee Summary**

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

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
3-Day Cancellation Fee	= \$ 150.00
Retained Deposit Pursuant to Rule 10332(f)	= \$ 562.50
Total Fees	= \$ 1,575.00
<u>Less payments</u>	<u>= \$(1,575.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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

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

3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Ronald H. Kabot are charged jointly and severally with the following fees and costs:

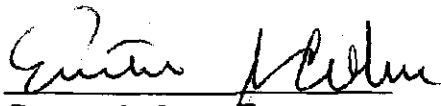
3-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 712.50
<u>Less payments</u>	<u>= \$( 0.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 712.50</b>

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**

Guenter S. Cohn, Esq.	-	Public Arbitrator, Presiding Chair
William C. Stewart, Jr., J.D.	-	Public Arbitrator
Arbitrator's Name	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Guenter S. Cohn, Esq.  
Chair, Public Arbitrator

1.2.2004  
Signature Date

William C. Stewart, Jr., J.D.  
Public Arbitrator

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Signature Date

James B. Guillou, Sr.  
Non-Public Arbitrator

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

1/10/05  
Date of Service

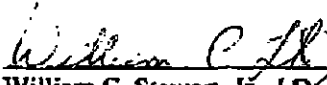
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William C. Stewart, Jr., J.D.	-	Public Arbitrator
James B. Guillou, Sr.	-	Non-Public Arbitrator

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Guenter S. Cohn, Esq.  
Chair, Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
William C. Stewart, Jr., J.D.  
Public Arbitrator

12/20/04  
\_\_\_\_\_  
Signature Date

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James B. Guillou, Sr.  
Non-Public Arbitrator

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

1/10/05  
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Date of Service



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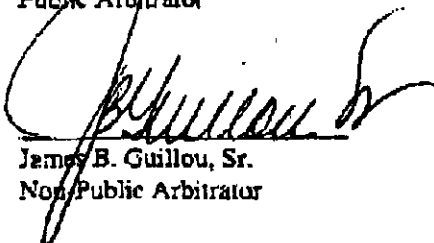
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