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

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In the Matter of the Arbitration Between:

Names of the Claimants

Charles J. Aucoin  
Rebecca S. Aucoin

Case Number: 04-00306

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Ronald Clayton

Hearing Site: New Orleans, Louisiana

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

**REPRESENTATION OF PARTIES**

For Charles J. Aucoin and Rebecca S. Aucoin, hereinafter collectively referred to as "Claimants": L. Jerome Stanley, Esq., L. Jerome Stanley, P.C., Baton Rouge, Louisiana.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Ronald Clayton ("Clayton"), hereinafter collectively referred to as "Respondents": Lauryn J. Hart, Litigation Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: January 20, 2004.

Claimants signed the Uniform Submission Agreements: February 12, 2004.

Motion to Dismiss, Answer and Affirmative Defenses filed by Respondents on or about: May 4, 2004.

Respondent MLPFS signed the Uniform Submission Agreement: June 4, 2004.

Respondent Clayton signed the Uniform Submission Agreement: June 4, 2004.

Claimants' Response to Motion to Dismiss filed on or about: August 26, 2004.

Respondents' Reply in Further Support of Motion to Dismiss filed on or about: October 14, 2004.

Claimants' Response to Respondents' Reply in Further Support of Motion to Dismiss filed on or about: January 10, 2005.

**CASE SUMMARY**

Claimants asserted the cause of action of unauthorized trading. The cause of action relates to the purchase in Claimants' account of the Conseco & Delaware Select mutual funds.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$93,280.51, punitive damages in the amount of \$30,000.00, costs, and attorneys' fees.

Respondents requested that the undersigned arbitrators (the "Panel") enter an order dismissing the Statement of Claim in its entirety with prejudice, expungement of all references to this matter from the NASD Central Registration Depository ("CRD") records of Respondent Clayton, and such other and further relief as is deemed just and proper.

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

On or about January 19, 2005, during the Pre-hearing Conference, Respondents withdrew their Motion to Dismiss without prejudice, specifically reserving the right to re-file the motion at a later time.

During the evidentiary hearing, on or about November 8, 2005, Respondents made an ore tenus Motion to Strike Claimants' damage calculation, to which the Claimants' objected. The Panel denied said motion.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are dismissed, with prejudice.

Any and all relief not specifically addressed herein, including Claimants' request for punitive damages and Respondent Clayton's request for expungement, are denied.

### **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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MLPFS is a party and a member firm.

|                         |              |
|-------------------------|--------------|
| Member surcharge        | = \$1,700.00 |
| Pre-hearing process fee | = \$ 750.00  |

|                     |              |
|---------------------|--------------|
| Hearing process fee | = \$2,750.00 |
| Total Member Fees   | = \$5,200.00 |

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed 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:

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 Chairperson has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

|   |              |
|---|--------------|
| Four (4) Pre-hearing sessions with the Panel @ \$1,125.00/session | = \$4,500.00 |
|---|--------------|

|                          |                    |           |
|--------------------------|--------------------|-----------|
| Pre-hearing conferences: | August 13, 2004    | 1 session |
|                          | September 23, 2004 | 1 session |
|                          | November 10, 2004  | 1 session |
|                          | January 19, 2005   | 1 session |

|  |              |
|--|--------------|
| Three (3) Hearing sessions with the Panel @ \$1,125.00/session | = \$3,375.00 |
|--|--------------|

|                |                  |            |
|----------------|------------------|------------|
| Hearing Dates: | November 8, 2005 | 2 sessions |
|                | November 9, 2005 | 1 session  |

|                  |              |
|------------------|--------------|
| Total Forum Fees | = \$7,875.00 |
|------------------|--------------|

1. The Panel has assessed \$3,937.50 of the forum fees to Claimants, jointly and severally.
2. The Panel has assessed \$3,937.50 of the forum fees to Respondents, 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 assessed during these proceedings.

**Fee Summary**

|  |              |
|--|--------------|
| 1. Claimants are solely liable for:                  |              |
| Initial Filing Fee                                   | = \$ 300.00  |
| Forum Fees   | = \$3,937.50 |
| Total Fees   | = \$4,237.50 |
| Less payments  | = \$1,425.00 |
| Balance Due NASD Dispute Resolution                  | = \$2,812.50 |
| 2. Respondent MLPFS is solely liable for:            |              |
| Member Fees  | = \$5,200.00 |
| Total Fees   | = \$5,200.00 |
| Less payments  | = \$5,200.00 |
| Balance Due NASD Dispute Resolution                  | = \$ 0.00    |
| 3. Respondents are jointly and severally liable for: |              |
| Forum Fees   | = \$3,937.50 |
| Total Fees   | = \$3,937.50 |
| Less payments  | = \$ 0.00    |
| Balance Due NASD Dispute Resolution                  | = \$3,937.50 |

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

**ARBITRATION PANEL**

|                           |   |  |
|---------------------------|---|--|
| George Denegre, Jr., Esq. | - | Non-Public Arbitrator, Presiding Chairperson |
| Simon F. Savoie, Jr., CPA | - | Public Arbitrator                            |
| James Francis Donovan     | - | Public Arbitrator                            |

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/  
George Denegre, Jr., Esq.  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_/s/  
Simon F. Savoie, Jr., CPA  
Public Arbitrator

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

\_\_\_\_\_/s/  
James Francis Donovan  
Public Arbitrator

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

November 17, 2005  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
 Arbitration No. 04-00306  
Award Page 4 of 4

Fee Summary

1. Claimants are solely liable for:

|                                     |              |
|-------------------------------------|--------------|
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| Total Fees                          | = \$4,237.50 |
| Less payments                       | = \$1,425.00 |
| Balance Due NASD Dispute Resolution | = \$2,812.50 |

2. Respondent MLPPS is solely liable for:

|                                     |              |
|-------------------------------------|--------------|
| Member Fees                         | = \$5,200.00 |
| Total Fees                          | = \$5,200.00 |
| Less payments                       | = \$5,200.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00    |

3. Respondents are jointly and severally liable for:

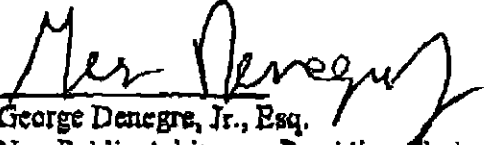
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| Simon F. Savoie, Jr., CPA | - | Public Arbitrator                            |
| James Francis Donovan     | - | Public Arbitrator                            |

Consenting Arbitrators' Signatures

  
 George Denegre, Jr., Esq.  
 Non-Public Arbitrator, Presiding Chairperson

11/17/05  
 Signature Date

Simon F. Savoie, Jr., CPA  
 Public Arbitrator

Signature Date

James Francis Donovan  
 Public Arbitrator

Signature Date

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**NASD Dispute Resolution**

Arbitration No. 04-00306

Award Page 4 of 4**Fee Summary****1. Claimants are solely liable for:**

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Public Arbitrator

17 Nov 05  
Signature Date

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