

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

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In the Matter of the Arbitration Between:

Lottie-Jane Strachan, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Sandra U. Torres, Respondents

Case Number: 04-00916

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:

Robert M. Taylor, Esq.  
Seltzer Caplan McMahon Vitek  
San Diego, California

**CASE INFORMATION**

Statement of Claim filed: February 9, 2004

Claimant's Uniform Submission Agreement signed: January 9, 2004

Respondents' Joint Statement of Answer filed: April 16, 2004

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement signed: March 15, 2004

Respondent Sandra U. Torres' Uniform Submission Agreement signed: April 14, 2004

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, constructive fraud, unsuitability, failure to supervise, violations of federal and state securities laws, and violation of NASD Rules of Fair Practice and NYSE rules. The dispute involved, but was not limited to, the purchase and/or sale of Nations Marisco Focused Equities, Oppenheimer Quest Balance Value Fund, MFS Capital Opportunities Fund, Van Kampen Aggressive Growth Fund, State Street Research, Munder Netnet Fund, Yahoo Inc., Cisco Systems, and Qualcomm 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 \$30,000.00 in compensatory damages, all profits Respondents generated from the Claimant's Accounts, lost opportunity cost, interest at the legal rate of all sums recovered, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorneys' fees, and forum fees. Additionally, Respondent Sandra U. Torres requested expungement of this matter from her regulatory records.

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

On February 25, 2004, Claimant Lottie-Jane Strachan 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 December 27, 2004, NASD Dispute Resolution received notice that the parties reached a settlement.

The parties agreed that a handwritten, signed Award may be entered.

### **STIPULATION**

The Parties to this arbitration stipulate as follows:

Whereas, Claimant Lottie-Jane Strachan brought certain claims against Merrill Lynch, Pierce, Fenner & Smith, Inc. and Sandra U. Torres ("Respondents") before NASD Dispute Resolution for arbitration and resolution and was assigned claim No. 04-00916;

Whereas, as set forth in their Statement of Answer, Respondents denied and continue to deny all material allegations of Claimant's claims, and have agreed to settle this matter;

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

Whereas, the Parties have entered into a Confidential Settlement Agreement and General Release (the "Settlement Agreement") regarding Claimant's claims against Respondents;

Whereas, prior to any settlement discussions, Claimant previously dismissed Sandra U. Torres from these arbitration proceedings, with prejudice;

Whereas, Sandra U. Torres did not make any monetary contribution to the settlement;

Whereas, Claimant consents to and supports that her complaint against Respondent Sandra U. Torres be expunged from her Forms U-4, U-5, and any other report or reporting document;

Wherefore, Claimant and Merrill Lynch, Pierce, Fenner & Smith, Inc., hereby stipulate to, and seek the arbitrator's approval of, the following order:

1. The arbitration denominated Lottie-Jane Strachan v. Merrill Lynch, Pierce, Fenner & Smith, Inc., et al, NASD 04-00916, shall be dismissed with prejudice upon notification by Claimant that the settlement proceedings have been received.
2. The arbitrators recommend and direct that all references to the complaints of the Claimant or the claims filed by Lottie-Jane Strachan be expunged from the records of Sandra U. Torres maintained by the NASAD Central Registration Depository, 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, Pierce, Fenner & Smith, Inc. shall bear any costs or fees in connection with any court proceedings that occur to obtain expungement.

### **AWARD**

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

1. Claimant and Respondents have entered into a confidential Settlement Agreement.
2. The Arbitrator recommends the expungement of all reference to the above captioned arbitration from Respondent Sandra U. Torres' 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 Sandra U. Torres must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **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	= \$ 150.00
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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, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 600.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 2,350.00</b>

#### **Forum Fees and Assessments**

The Arbitrator 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. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session= \$ 450.00	
Pre-hearing conference: June 25, 2004	1 session

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<b>Total Forum Fees</b>	<b>= \$ 450.00</b>
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1. The Arbitrator assessed \$225.00 of the forum fees to Claimant Lottie-Jane Strachan.
2. The Arbitrator assessed \$225.00 of the forum fees jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Sandra U. Torres.

**Fee Summary**

1. Claimant Lottie-Jane Strachan is charged with the following fees and costs:

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$ 225.00
<u>Retained Deposit Pursuant to Rule 10332(f)</u>	= \$ 225.00
Total Fees	= \$ 600.00
<u>Less payments</u>	= \$( 600.00)
<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	= \$ 2,350.00
<u>Less payments</u>	= \$(2,350.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Sandra U. Torres are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 225.00
<u>Less payments</u>	= \$( 0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 225.00</b>

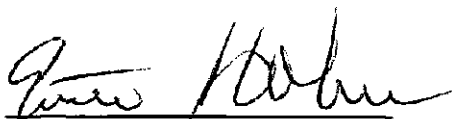
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATOR**

Guenter S. Cohn

- Public Arbitrator, Presiding Chair

**Arbitrator's Signature**



Guenter S. Cohn  
Chair, Public Arbitrator

4-21-05  
Signature Date

4/22/05  
Date of Service

NORMAN T. SELTZER  
ROBERT CAPLAN  
GERALD L. MCMAHON  
REGINALD A. VITEK  
DAVID J. DORNE  
JAMES R. DAWE  
BRIAN T. SELTZER

ELIZABETH A. SMITH CHAVEZ  
JOYCE A. MCCOT  
DENNIS J. WICKHAM  
JOHN H. ALSAUGH  
JAMES P. DELPHEY  
ELINOR T. MERIDETH  
MICHAEL G. NARDI  
THOMAS F. STEINKE  
NEAL P. PAWISH  
SEAN T. MARGADEN  
DAVID J. ZUBKOFF  
CHARLES L. GOLDBERG  
PATRICK D. HALL  
MICHAEL A. LEONE  
DANIEL A. ANDRIST  
J. SCOTT SCHEPER  
LEE E. HEJMANOWSKI  
DANIEL E. EATON  
MONTY A. MCINTYRE  
VICTOR A. VILAPLANA  
GREGORY A. VEGA  
HOWARD J. EARNHORST II  
PAUL R. DATNOW  
JACK R. LEER  
AMANDA L. KRAMER  
M. CHRISTINE TENNISON  
ANDREW D. BROOKS  
DAVID M. GREELEY  
CHARLES B. WITHAM  
RHONDA K. CRANDALL  
JEFFREY B. HARRIS  
SCOTT A. MILLER

ROBERT (ROBIN) M. TRAYLOR  
MATTHEW M. MAHONEY  
JOSEPH P. MARTINEZ  
KYLE A. HOOK  
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JOHN M. TOSCANO

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S. SCOTT WILLIAMS  
MARNIE S. SKEEN

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619.685-3099

619.702-6823 FAX

April 8, 2005

Ms. Jennine Robinson  
NASD Dispute Resolution, Inc.  
300 South Grand Avenue, Suite 1620  
Los Angeles, California 90071

RE: NASD Case Number 04-00916  
*Lottie-Jane Strachan v. Merrill Lynch Pierce Fenner & Smith and Sandra Torres*  
Our File No. 05692.57976

Dear Ms. Robinson:


Enclosed please find the proposed Stipulated Award (executed by each of the parties) in the above entitled case. As part of the settlement, Claimant Lottie-Jane Strachan and Respondent Merrill Lynch have agreed to submit the proposed Stipulated Award to the arbitration panel. As you will note, entry of the proposed Stipulated Award will confirm the dismissal with prejudice of all claims and third-party claims asserted in the above-referenced arbitration.

We ask that you please forward copies of the enclosed proposed Stipulated Award to the members of the arbitration panel for their review and action. Should any telephonic hearing be requested by the arbitration panel at this point in the case, please so advise the parties.

Finally, I apologize for getting this Stipulated Award to you so late. I was of the understanding that it had been forward to you some time ago. I hope that this delay will not prejudice Ms. Torres' ability to have the panel consider the deserved merits of an expungement award in this matter.

Thanks for your ongoing cooperation with respect to this case and its settlement.

Very truly yours,

  
Robert M. Traylor  
Seltzer Caplan McMahon Vitek  
A Law Corporation

RMT:md

Enclosure

Received

APR 11 2005

NASD West Regional  
Dispute Resolution Office

NASD DISPUTE REGULATION, INC.

LOTTIE-JANE STRACHAN,

Claimant,

vs.

MERRILL LYNCH, PIERCE,  
FENNER & SMITH,  
INCORPORATED and SANDRA  
TORRES,

Respondents.

) NASD ARBITRATION NO. 04-  
) 00916

) STIPULATED AWARD

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The Parties to this arbitration stipulate as follows:

Whereas, Claimant Lottie-Jane Strachan brought certain claims against Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Sandra Torres ("Torres") (collectively "Respondents") before NASD Dispute Regulation, Inc. for arbitration and resolution and was assigned claim No. 04-00916;

Whereas, as set forth in the their Statement of Answer, Respondents denied and continue to deny all material allegations of Claimant's claims, and have agreed to settle this matter;

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



matter;

Whereas, the Parties have entered into a Confidential Settlement Agreement and General Release (the "Settlement Agreement") regarding Claimant's claims against Respondents;

Whereas, prior to any settlement discussions, Claimant previously dismissed Torres from these arbitration proceedings, with prejudice;

Whereas, Torres did not make any monetary contribution to the settlement;

Whereas, Claimant consents to and supports that her complaint against Respondent Torres be expunged from Ms. Torres' Forms U-4, U-5 and any other report or reporting document;

WHEREFORE, Claimant and Merrill Lynch, hereby stipulate to, and seek the arbitrators' approval of, the following order:

1. The arbitration denominated Lottie-Jane Strachan v. Merrill Lynch, Pierce, Fenner & Smith, *et al.*, NASD 04-00916, shall be dismissed with prejudice upon notification by Claimant that the settlement proceeds have been received.
2. The arbitrators recommend and direct that all references to the complaints of the Claimant or the claim filed by Lottie-Jane Strachan be expunged from the records of Respondent Sandra Torres 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 expungement.

IT IS SO STIPULATED.

Dated: February 2, 2005 Lottie-Jane Strachan  
Lottie-Jane Strachan

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Merrill Lynch, Pierce, Fenner & Smith  
Incorporated

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
Arbitrator

Date: \_\_\_\_\_

\_\_\_\_\_  
Arbitrator

Date: \_\_\_\_\_

\_\_\_\_\_  
Arbitrator

NASD ARBITRATION NO. 04-00916  
Stipulated Award

3. Merrill Lynch shall bear any costs or fees in connection with any court proceedings that occur to obtain expungement.

IT IS SO STIPULATED.

Dated: \_\_\_\_\_  
Lottie-Jane Strachan

Dated: 2-10-05 By: [Signature]  
Merrill Lynch, Pierce, Fenner & Smith  
Incorporated

IT IS SO ORDERED.

Date: \_\_\_\_\_  
Arbitrator

Date: \_\_\_\_\_  
Arbitrator

Date: \_\_\_\_\_  
Arbitrator