

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

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In the Matter of the Arbitration Between:

Marc Andre Limot and Shirley A. Limot (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. (Respondent)

Case Number: 04-01557

Hearing Site: New York, New York

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Nature of the Dispute: Customers vs. Member.

**REPRESENTATION OF PARTIES**

Claimants Marc Andre Limot ("M. Limot") and Shirley A. Limot ("S. Limot") hereinafter collectively referred to as "Claimants": Daniela Hargis, Maplewood, NJ.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") hereinafter referred to as "Respondent": Alan S. Rafterman, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 27, 2004.

Reply to Respondent's Answer filed by Claimants on or about: May 26, 2004.

Claimants signed the Uniform Submission Agreement: February 26, 2004.

Statement of Answer filed by Respondent on or about: May 17, 2004.

Respondent signed the Uniform Submission Agreement: May 17, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; misrepresentation; and manipulations. The causes of action relate to common stock.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$10,000.00; and punitive damages in the amount of \$150,000.00.

Respondent requested that the Panel dismiss the Statement of Claim in its entirety; costs and expenses, including forum fees and reasonable attorneys' fees; and such other and further relief as is just and proper.

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

On or about October 25, 2004, Respondent made a motion to dismiss the Statement of Claim. Claimant objected to the motion. On or about December 1, 2004, Respondent made a second motion to dismiss Claimant's Statement of Claim for violation of the Panel's discovery order. On or about December 6, 2004, the Panel granted Respondent's Motion to Dismiss with prejudice.

The parties have 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, and the testimony and evidence presented at the pre-hearing conferences, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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	= \$300.00
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#### **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, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **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 a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: November 17, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00  
Pre-hearing conference: September 30, 2004 1 session

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Total Forum Fees = \$1,575.00

1. The Panel has assessed \$787.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$787.50 of the forum fees against Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 787.50
Total Fees	= \$1,087.50
<u>Less payments</u>	= \$1,425.00
Refund Due Claimant	= \$ 337.50

2. Respondent is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	= \$ 787.50
Total Fees	= \$5,987.50
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 787.50

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

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**ARBITRATION PANEL**

Martin A. Edelstein, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald Ferguson, Esq.	-	Public Arbitrator
Walter A. Kapuscinski	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Martin A. Edelstein, Esq.  
Public Arbitrator, Presiding Chairperson

12-8-04

Signature Date

\_\_\_\_\_  
Donald Ferguson, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Walter A. Kapuscinski  
Non-Public Arbitrator

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

December 15, 2004  
Date of Service (For NASD Dispute Resolution use only)

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**ARBITRATION PANEL**

Martin A. Edelstein, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald Ferguson, Esq.	-	Public Arbitrator
Walter A. Kapuscinski	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

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Martin A. Edelstein, Esq.  
Public Arbitrator, Presiding Chairperson

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

Donald Ferguson  
Donald Ferguson, Esq.  
Public Arbitrator

December 7, 2004  
Signature Date

\_\_\_\_\_  
Walter A. Kapuscinski  
Non-Public Arbitrator

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

December 15, 2004  
Date of Service (For NASD Dispute Resolution use only)

NASD REGULATION

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**ARBITRATION PANEL**

Martin A. Edelstein, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald Ferguson, Esq.	-	Public Arbitrator
Walter A. Kapuscinski	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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\_\_\_\_\_  
Martin A. Edelstein, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Donald Ferguson, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
Walter A. Kapuscinski  
Non-Public Arbitrator

12/8/09  
\_\_\_\_\_  
Signature Date

December 15, 2004  
Date of Service (For NASD Dispute Resolution use only)