

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Donald Bluemel

And

04-01826  
Chicago, Illinois

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith Inc.  
Maureen M. Raihle

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

**REPRESENTATION OF PARTIES**

Donald Bluemel ("**Claimant**") was represented by Sandor L. Grossman, Esq., Chicago, Illinois and Andrew Stoltmann, Esq., Stoltmann Law Offices, P.C., Chicago, Illinois.

Merrill Lynch, Pierce, Fenner & Smith Inc. ("**Respondent**") and Maureen M. Raihle ("**Respondent**") hereinafter referred to as ("**Respondents**") were represented by Peter A. Cantwell, Esq., and Stephen F. Boulton, Esq., Cantwell & Cantwell, Chicago, Illinois, 60602.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 10, 2004. Submission Agreement of Claimant Donald Bluemel was signed on March 11, 2004.

Statement of Answer was filed by Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. and Maureen M. Raihle on or about May 18, 2005. Submission Agreement of Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. was signed on December 16, 2004. Submission Agreement of Respondent Maureen M. Raihle was signed on May 18, 2005.

**CASE SUMMARY**

Claimant asserted the following cause of action: unsuitable investments, excessive trading, unauthorized trading, failure to supervise, negligent account management, misrepresentation, violation of Illinois Securities Law of 1953, violation of NASD rules, common law fraud, breach of contract and breach of fiduciary duty.

Unless specifically admitted in their Answer, Respondents denied the allegations made

in the Statement of Claim and asserted the following defenses:

1. Claimant failed to state a claim.
2. Claimant's claims are barred by the applicable statutes of limitations.
3. Claimant's claims are barred by the doctrines of waiver, estoppel, ratification and laches
4. The transactions upon which Claimant based his allegations were properly conducted in accordance with applicable rules and regulations.
5. Claimant's claims are barred because he failed to mitigate his damages.
6. Claimant's alleged damages were proximately caused by his own conduct.
7. There is no private right of action for alleged violation of NASD rules.

### **RELIEF REQUESTED**

Claimant requested: Compensatory damages of \$579,000.00 and disgorgement of commissions, margin interest and deferred sales charges, together with interest, attorney's fees, costs and expenses, and punitive damages.

Respondents requested: Denial of the relief requested by Claimant and expungement of any record of the customer complaint from the CRD.

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

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated 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 the NASD Dispute Resolution (the "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.) This matter has been settled pursuant to a confidential Settlement Agreement by and between Claimant and all Respondents.
- 2.) The Statement of Claim filed by Claimant, Donald G. Bluemel against Respondents, Merrill Lynch, Pierce, Fenner & Smith Inc. and Maureen M. Raihle, is hereby dismissed with prejudice.
- 3.) Other than NASD fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.

- 4.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Maureen M. Raihle's registration records (CRD # 1780412) maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Maureen M. Raihle must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 5.) That any relief not specifically enumerated, including punitive damages, is hereby denied 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 (Fee waived by Director of Arbitration) = \$375.00

#### **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. In this matter, the member firm(s) is Merrill Lynch, Pierce, Fenner & Smith Inc.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Total Member Fees	\$	<u>3,000.00</u>

### **Fee Summary**

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

Member Fees	= \$	3,000.00
Total Fees	= \$	<u>3,000.00</u>
<u>Less payments</u>	= \$	<u>-3,000.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

James F. Carlson, Esq. - Public Arbitrator, Presiding Chair  
Gregory D. Bruno, Esq. - Public Arbitrator  
Ronald A. Lavery - Non-Public Arbitrator

Concurring Arbitrators:

/s/ James F. Carlson, Esq.  
James F. Carlson, Esq.  
Public Arbitrator, Presiding Chair

December 22, 2006  
Signature Date

Gregory D. Bruno, Esq.  
Gregory D. Bruno, Esq.  
Public Arbitrator

Signature Date

/s/ Ronald A. Lavery  
Ronald A. Lavery  
Non-Public Arbitrator

December 27, 2006  
Signature Date

December 27, 2006  
Date of Service (For NASD office use only)

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

**James F. Carlson, Esq. - Public Arbitrator, Presiding Chair**  
**Gregory D. Bruno, Esq. - Public Arbitrator**  
**Ronald A. Lavery - Non-Public Arbitrator**

### Concurring Arbitrators:

*James F. Carlson, Esq.*  
James F. Carlson, Esq.  
Public Arbitrator, Presiding Chair

12/22/06  
Signature Date

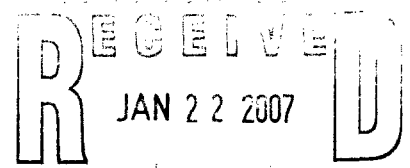
Gregory D. Bruno, Esq.  
Public Arbitrator

**Signature Date**

**Ronald A. Lavery**  
Non-Public Arbitrator

2.27-02  
Signature Date

Date of Service (For NASD office use only)




**All balances are due to NASD Dispute Resolution**

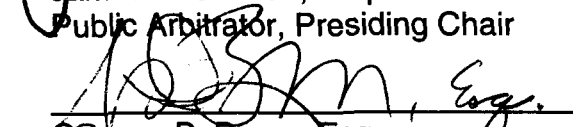
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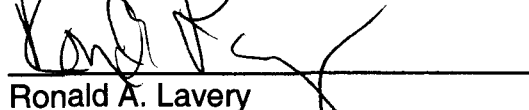
Concurring Arbitrators:

  
James F. Carlson, Esq.  
Public Arbitrator, Presiding Chair

12/22/06  
Signature Date

  
Gregory D. Bruno, Esq.  
Public Arbitrator

1/15/07  
Signature Date

  
Ronald A. Lavery  
Non-Public Arbitrator

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Signature Date

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Date of Service (For NASD office use only)