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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Nazila Talebly

Case Number: 04-02127

Names of the Respondents  
Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Nancy Goethel  
E. Thomas Holder, Jr.

Hearing Site: Orlando, Florida

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

**REPRESENTATION OF PARTIES**

For Nazila Talebly, hereinafter referred to as "Claimant": Wayne H. Schwartz, Esq., Blum Silver & Schwartz, LLP, Coral Springs, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"), Nancy Goethel ("Goethel") and E. Thomas Holder, Jr. ("Holder"), hereinafter collectively referred to as "Respondents": John H. Fleming, Esq., Sutherland, Asbill & Brennan, LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: March 19, 2004.  
Claimant signed the Uniform Submission Agreement: March 21, 2004.  
Statement of Answer filed by Respondents on or about: July 30, 2004.  
Respondent Merrill signed the Uniform Submission Agreement: May 11, 2004.  
Respondent Goethel signed the Uniform Submission Agreement: May 25, 2004.  
Respondent Holder signed the Uniform Submission Agreement: July 8, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of industry rules, including NYSE Rule 405 and NASD Rule 2310; breach of contract; breach of fiduciary duty; common law fraud; negligence; and negligent hiring, retention and supervision of employees. Specifically, Claimant alleged that stock she received from the sale of her husband's business, which was subject to Rule 144 restrictions, should have been sold in early 2000. Claimant asserted that another brokerage firm had a buyer for the stock and recommended that she sell it. Claimant also alleged that as the stock price was plummeting, she wanted to sell, but that her Merrill Lynch Financial Advisor recommended she hold the stock and did not arrange for the sale promptly. The causes of action relate to Claimant's ownership of restricted shares of Cyber-Care stock.

Unless specifically admitted in their Answer, Respondents denied all allegations of wrongdoing and asserted that they did everything possible to lift the Rule 144 restrictions and successfully lifted the restrictions several times, yet Claimant decided not to sell the stock. Respondents further asserted that Claimant's claims are barred by applicable statutes of limitations and by ratification, waiver, laches, unclean hands, and estoppel. Furthermore, Respondents asserted that they maintained an adequate and reasonable system of supervision and control over their employees.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of between \$1,000,000.00 and \$3,000,000.00, plus interest at the legal rate from the date of purchase or reasonable market return, rescission, punitive damages, the cost of the proceedings, and such other relief as deemed just and proper.

Respondents requested an award dismissing the claim in its entirety, with prejudice, and assessing all costs against Claimant.

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

On or about May 20, 2005, the parties filed with NASD Dispute Resolution a notice of settlement.

On or about June 14, 2005, the parties filed with NASD Dispute Resolution a proposed Stipulated Award for consideration by the Panel, which contained a provision stating that prior to the evidentiary hearing, the parties fully and finally settled all claims by and between them, and further requested that this Stipulated Award be entered by the Panel.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings and the proposed Stipulated Award submitted by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The listed parties have amenablely resolved their differences and have requested this Stipulated Award;
2. The parties shall bear their respective costs, including attorney's fees, except as fees are specifically addressed below;
3. The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Goethel's and Holder'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, Respondents Goethel and Holder must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
4. Respondents are dismissed from this matter, with prejudice; and

5. Any and all relief not specifically addressed herein, including Claimant's request for punitive damages, is denied in its entirety.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 500.00

#### **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, Respondent Merrill is a member firm and a party.

|                         |              |
|-------------------------|--------------|
| Member surcharge        | = \$2,800.00 |
| Pre-hearing process fee | = \$ 750.00  |
| Hearing process fee     | = \$5,000.00 |
| Total Member Fees       | = \$8,550.00 |

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

#### **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:

Claimant notified NASD Dispute Resolution that the matter had settled two business days prior to the commencement of the evidentiary hearing. As such, the Panel assessed the three-day cancellation fee of \$300.00 as follows:

\$150.00 to Claimant; and,  
\$150.00 to Respondents Merrill, Goethel and Holder, jointly and severally

#### **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 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 the Panel @ \$1,200.00 per session          | = \$1,200.00 |
| Pre-hearing conference: August 17, 2004 1 session                            |              |
| Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 per session | = \$ 900.00  |
| Pre-hearing conferences: May 3, 2005 1 session                               |              |
| May 13, 2005 1 session   |              |
| <hr/>  |              |
| Total Forum Fees   | = \$2,100.00 |

The Panel has assessed forum fees in the amount of \$1,050.00 to Claimant.

The Panel has assessed forum fees in the amount of \$1,050.00 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 incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

|  |                     |
|--|---------------------|
| Initial Filing Fee   | = \$ 500.00         |
| Retained Hearing Session Deposit pursuant to Rule 10332(f) of the Code | = \$ 150.00         |
| Three-Day Cancellation Fee   | = \$ 150.00         |
| <u>Forum Fees</u>  | <u>= \$1,050.00</u> |
| Total Fees   | = \$1,850.00        |
| <u>Less payments</u>   | <u>= \$1,700.00</u> |
| Balance Due NASD Dispute Resolution                                    | = \$ 150.00         |

Respondent Merrill is solely liable for:

|                                     |                     |
|-------------------------------------|---------------------|
| <u>Member Fees</u>                  | <u>= \$8,550.00</u> |
| Total Fees                          | = \$8,550.00        |
| <u>Less payments</u>                | <u>= \$8,550.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 0.00           |

Respondents are jointly and severally liable for:

|                            |                     |
|----------------------------|---------------------|
| Three-Day Cancellation Fee | = \$ 150.00         |
| <u>Forum Fees</u>          | <u>= \$1,050.00</u> |

|                                     |              |
|-------------------------------------|--------------|
| Total Fees                          | = \$1,200.00 |
| Less payments                       | = \$ 0.00    |
| Balance Due NASD Dispute Resolution | = \$1,200.00 |

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

**ARBITRATION PANEL**

|                                |   |  |
|--------------------------------|---|--|
| Pasquale Anthony Mercurio, MBA | - | Public Arbitrator, Presiding Chairperson |
| William P. Louphmane           | - | Public Arbitrator                        |
| Michael D. Walsh               | - | Non-Public Arbitrator                    |

**Concurring Arbitrators' Signatures**

/s/  
Pasquale Anthony Mercurio, MBA  
Public Arbitrator, Presiding Chairperson

June 17, 2005  
Signature Date

/s/  
William P. Louphmane  
Public Arbitrator

June 16, 2005  
Signature Date

/s/  
Michael D. Walsh  
Non-Public Arbitrator

June 16, 2005  
Signature Date

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

|                                     |              |
|-------------------------------------|--------------|
| Total Fees                          | = \$1,200.00 |
| Less payments                       | = \$ 0.00    |
| Balance Due NASD Dispute Resolution | = \$1,200.00 |

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**ARBITRATION PANEL**

Pasquale Anthony Mercurio, MBA  
William P. Louphmans  
Michael D. Walsh

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Pasquale Anthony Mercurio, MBA  
Public Arbitrator, Presiding Chairperson

17 June 2005  
Signature Date

William P. Louphmans  
Public Arbitrator

Signature Date

Michael D. Walsh  
Non-Public Arbitrator

Signature Date

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| William P. Loughnane           | - | Public Arbitrator                        |
| Michael D. Walsh               | - | Non-Public Arbitrator                    |

**Concurring Arbitrators' Signatures**

Pasquale Anthony Mercurio, MBA  
Public Arbitrator, Presiding Chairperson

*William P. Loughnane*  
William P. Loughnane  
Public Arbitrator

Signature Date

*6/16/05*

Signature Date

Michael D. Walsh  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

|                                     |              |
|-------------------------------------|--------------|
| Total Fees                          | = \$1,200.00 |
| <u>Less payments</u>                | = \$ 0.00    |
| Balance Due NASD Dispute Resolution | = \$1,200.00 |

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ARBITRATION PANEL

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| William P. Louphnane           | - | Public Arbitrator                        |
| Michael D. Walsh               | - | Non-Public Arbitrator                    |


Concurring Arbitrators' Signatures

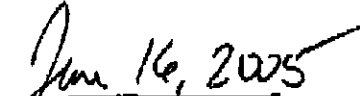
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Pasquale Anthony Mercurio, MBA  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
William P. Louphnane  
Public Arbitrator

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Signature Date

  
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