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

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In the Matter of the Arbitration Between:

Names of the Claimants

G.N. Tsandoulas and Marie K. Tsandoulas JTWROS  
G.N. Tsandoulas IRRA FBO G.N. Tsandoulas  
Marie K. Tsandoulas IRRA FBO Marie K. Tsandoulas

Case Number: 04-02454

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Gerald Richard Browne

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For G.N. Tsandoulas and Marie K. Tsandoulas JTWROS, G.N. Tsandoulas IRRA FBO G.N. Tsandoulas, and Marie K. Tsandoulas IRRA FBO Marie K. Tsandoulas, hereinafter collectively referred to as "Claimants": Adam M. Fetterman, Esq., Fetterman & Associates, P.A., North Palm Beach, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Gerald Richard Browne ("Browne"), hereinafter collectively referred to as "Respondents": S. Lawrence Polk, Esq. and Carranza M. Pryor, Esq., Sutherland Asbill & Brennan LLP, Atlanta, Georgia.

**CASE INFORMATION**

*Statement of Claim filed on or about:* April 7, 2004.

*Claimants signed the Uniform Submission Agreements:* April 24, 2003.

*Statement of Answer filed by Respondent MLPFS on or about:* July 2, 2004.

*Respondent MLPFS signed the Uniform Submission Agreement on or about:* July 2, 2004.

*Reply to Affirmative Defenses filed by Claimants on or about:* July 12, 2004.

*Amended Statement of Claim filed by Claimants on or about:* August 12, 2004.

*Respondent Browne did not file a Statement of Answer or an executed Uniform Submission Agreement.*

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; fraud; negligent misrepresentation; negligence; negligent supervision; violation of Florida state securities laws; and, breach of contract. The causes of action relate to Claimants' investments in various common stocks, including, but not limited to, the following: America Online; B2B Internet Holder Trust; Cisco Systems; Internet Capital Group; and, JDS Uniphase.

Unless specifically admitted in its Answer, Respondent MLPFS denied all allegations made in the Statement of Claim and asserted the following defenses: all trades and the overall asset allocations were suitable and authorized by Claimants; Respondent MLPFS maintained an adequate and reasonable system of supervision and control over its employees; Claimants initiated the trading in the securities at issue; and, Claimants' claims are barred by applicable statutes of limitations and by ratification, waiver, laches, unclean hands, and estoppel.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$388,719.79, an unspecified amount of punitive damages, attorneys' fees, interest, costs and such other and further relief as deemed just and proper by the Panel.

Respondent MLPFS requested an award rejecting Claimants' Statement of Claim in its entirety and assessing all forum fees against Claimants.

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

Respondent Browne did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having requested the entry of this Stipulated Award by the Panel, is bound by the determination of the Panel on all issues submitted.

On or about August 12, 2004, Claimants filed an amended Statement of Claim naming Respondent Browne as a Respondent in this matter. On or about September 7, 2004, Claimants filed a notice of dismissal, with prejudice, of Respondent Browne from this matter.

Prior to the evidentiary hearing in this matter, Claimants and Respondent MLPFS fully and finally settled all claims by and between them.

On or about September 16, 2005, Claimants and Respondent MLPFS filed with NASD Dispute Resolution a Stipulation of Dismissal with Prejudice.

On or about October 7, 2005, the parties filed with NASD Dispute Resolution a proposed Stipulated Award for the Panel's consideration, which contained a request by Respondent Browne for expungement of all references to this arbitration proceeding from his registration records maintained by the NASD Central Registration Depository ("CRD").

The Panel conducted an evidentiary telephonic conference with the parties to discuss the parties' request for entry of a Stipulated Award. During the conference, Claimant's counsel represented that expungement of Respondent Browne's CRD record would not be prejudicial to Claimant.

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.

### **AWARD**

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

1. All claims asserted against Respondents MLPFS and Browne are dismissed, with prejudice.
2. The parties stipulate and agree that (1) at all times Claimants made or approved the investments made in their accounts and believed them to be suitable; and, (2) Respondent Browne recommended Claimants diversify their portfolio among different asset classes of equities, fixed income, and cash.
3. Based on the parties' stipulation and pursuant to Rule 2130 of the Code and NASD Notice to members 04-16, the Panel finds (1) that Respondent Browne was not involved in the alleged sales practice violations, and (2) that the claims against Respondent Browne are factually impossible and clearly erroneous.
4. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Browne's registration records maintained by CRD, with the understanding that pursuant to NASD Notices to Member 99-09 and 99-54, Respondent Browne must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
5. Each party shall bear their own costs and expenses associated with the above-referenced arbitration, including attorneys' fees, except as fees are specifically addressed below; and
6. Any and all relief not specifically addressed herein, including Claimants' request for punitive damages, is denied in its entirety.

### **FEES**

Pursuant to 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	= \$ 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, Respondent MLPFS is member firm and party.

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:

July 26, 27, 28 and 29, 2005, adjournment requested by Claimant and Respondent MLPFS = \$1,125.00

The Panel has assessed \$562.50 of the adjournment fee to Claimants, jointly and severally.

The Panel has assessed \$562.50 of the adjournment fee to Respondent MLPFS.

### **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:

No three-day cancellation fees were assessed in this matter.

### **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.

No injunctive relief fees were assessed in this matter.

### **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:

Three (3) Pre-hearing sessions with the Panel @ \$1,125.00 per session = \$3,375.00

Pre-hearing conferences:	September 20, 2004	1 session
	October 27, 2004	1 session
	February 10, 2005	1 session

One (1) Hearing session with the Panel @ \$1,125.00 per session = \$1,125.00

Hearing date:	December 16, 2005	1 session
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Total Forum Fees = \$4,500.00

The Panel has assessed forum fees in the amount of \$2,250.00 to Claimants, jointly and severally.

The Panel has assessed forum fees in the amount of \$1,687.50 to Respondent MLPFS.

The Panel has assessed forum fees in the amount of \$562.50 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**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	<u>= \$2,250.00</u>
Total Fees	= \$3,112.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$1,687.50

Respondent MLPFS is solely liable for:

Member Fees	= \$5,200.00
Adjournment Fee	= \$ 562.50
<u>Forum Fees</u>	<u>= \$1,687.50</u>
Total Fees	= \$7,450.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$2,250.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 562.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

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

**ARBITRATION PANEL**

Syma S. Kasdin	-	Public Arbitrator, Presiding Chairperson
Monica I. Salis, Esq.	-	Public Arbitrator
Martin V. Franks	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Syma S. Kasdin  
Public Arbitrator, Presiding Chairperson

December 19, 2005  
Signature Date

/s/  
Monica I. Salis, Esq.  
Public Arbitrator

December 20, 2005  
Signature Date

/s/

Martin V. Franks  
Non-Public Arbitrator

December 20, 2005  
Signature Date

December 21, 2005  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 04-02454  
Stipulated Award Page 5

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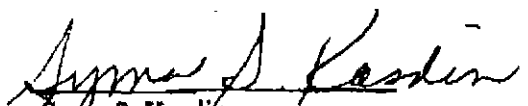
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ARBITRATION PANEL

Syma S. Kasdin  
Monica I. Salis, Esq.  
Martin V. Franks

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Syma S. Kasdin  
Public Arbitrator, Presiding Chairperson

12/19/05  
Signature Date

\_\_\_\_\_  
Monica I. Salis, Esq.  
Public Arbitrator

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

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**NASD Dispute Resolution**  
**Arbitration No. 04-02454**  
**Stipulated Award Page 5**

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**ARBITRATION PANEL**

Syma S. Kasdin  
Monica I. Salis, Esq.  
Martin V. Franks

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Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Syma S. Kasdin  
Public Arbitrator, Presiding Chairperson

Monica I. Salis, Esq.  
Public Arbitrator

Signature Date

Signature Date





Martin V. Franks

Non-Public Arbitrator

4/20/2005

Signature Date

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