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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Raymond Rush

Case Number: 04-02569

Names of the Respondents  
Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Richard K. Milton

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Raymond Rush, hereinafter referred to as "Claimant": C. Glen Ged, Esq., Ellis & Ged, P.A., Boca Raton, Florida and Robert Blanchard, Esq., Levin, Papantonio, Thomas, Mitchell, Eschner & Proctor, P.A., Pensacola, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Richard K. Milton ("Milton"), hereinafter collectively referred to as "Respondents": Terry R. Weiss, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: April 8, 2004.

Claimant signed the Uniform Submission Agreement: April 4, 2004.

Statement of Answer filed by Respondents on or about: July 12, 2004.

Respondent MLPFS signed the Uniform Submission Agreement: August 16, 2004.

Respondent Milton signed the Uniform Submission Agreement: August 12, 2004.

Motion to Dismiss filed by Respondents on or about: December 14, 2004.

Claimant's Memorandum of Law in Response to Respondents' Motion to Dismiss filed on or about: January 22, 2005.

Respondents' Reply in Support of Motion to Dismiss filed on or about: April 21, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; violation of Blue Sky Laws; negligence; negligent supervision; negligent misrepresentation; intentional misrepresentation; fraud; and, breach of contract. The causes of action relate to the purchase in Claimant's account of the following common stocks: Tyco International, Ltd; JDS Uniphase Corporation; America Online, Inc.; Cisco Systems, Inc.; and, EMC Corporation.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$719,950.00, unspecified punitive damages, interest, costs, attorneys' fees and such other damages the Panel deemed appropriate.

Respondents requested dismissal of the Statement of Claim in its entirety, an order expunging Claimant's claims from Respondent Milton's permanent registration records maintained by the NASD Central Registration Depository ("CRD"), costs, and other relief as is just and proper.

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

On or about August 29, 2005, and prior to the Panel rendering a decision on Respondents' Motion to Dismiss, the parties filed with NASD Dispute Resolution ("NASD") a Stipulation of Dismissal with Prejudice, thus rendering the Motion to Dismiss moot.

Claimant and Respondent MLPFS entered into a confidential settlement agreement. In connection with that agreement, Claimant dismissed all claims against Respondents MLPFS and Milton, with prejudice.

On or about September 7, 2005, the parties filed with NASD a proposed Stipulated Award for consideration by the Panel.

The parties agree 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, the parties' Stipulation of Dismissal with Prejudice and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are hereby denied and dismissed, with prejudice.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Milton's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Milton must obtain confirmation from a court of competent jurisdiction before the NASD CRD will execute the expungement directive.

Each party shall bear its own costs and expenses associated with this matter, including attorneys' fees, except as fees are specifically addressed below.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 375.00

#### **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, MLPFS is a member firm and a party.

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

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Total Member Fees = \$7,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

#### **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 incurred 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 incurred 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:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$2,400.00

Pre-hearing conferences: September 29, 2004 1 session

March 31, 1005 1 session

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Total Forum Fees = \$2,400.00

The Panel assessed forum fees of \$1,200.00 to Claimant.

The Panel assessed forum fees of \$1,200.00 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.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$1,200.00
Total Fees	= \$1,575.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

Member Fees	= \$7,000.00
Total Fees	= \$7,000.00
Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$1,200.00
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**

Mark C. Perry, Esq.	-	Public Arbitrator, Presiding Chairperson
Abe Mintz	-	Public Arbitrator
Jonathan H. Parker, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Mark C. Perry, Esq.  
Public Arbitrator, Presiding Chairperson

September 9, 2005  
Signature Date

/s/  
Abe Mintz  
Public Arbitrator

September 9, 2005  
Signature Date

/s/  
Jonathan H. Parker, Esq.  
Non-Public Arbitrator

September 9, 2005  
Signature Date

September 12, 2005  
Date of Service (For NASD Dispute Resolution office use only)

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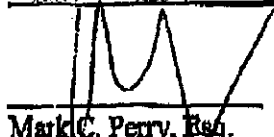
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Abc Mintz	-	Public Arbitrator
Jonathan H. Parker, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Mark C. Perry, Esq.  
Public Arbitrator, Presiding Chairperson

9/9/05  
Signature Date

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Abe Mintz  
Abe Mintz  
Public Arbitrator

9/9/05  
Signature Date

**Jonathan H. Parker, Esq.**  
**Non-Public Arbitrator**

**Signature Date**

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

Public Arbitrator

**Non-Public Arbitrator**

**Signature Date**

Signature Date

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