

**Stipulated Award  
NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

**Names of Claimants**

David A. Paschall and Stephen Paschall,  
as the Beneficiaries of the John P. Paschall Trust,  
David A. Paschall, as Independent Executor of the  
Estate of Betty Paschall, David Paschall, Individually  
and Mary F. Paschall

Case Number: 04-02953  
Hearing Site: Houston, Texas

vs.

**Names of Respondents**

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
and James Frances LaMotta

---

**NATURE OF DISPUTE**

Customers vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

David A. Paschall and Stephen Paschall, as the Beneficiaries of the John P. Paschall Trust, David A. Paschall, as Independent Executor of the Estate of Betty Paschall, David Paschall, Individually and Mary F. Paschall ("Claimants") were represented by Leonard J. Meyer, Esq., Zimmerman, Axelrad, Meyer, Stern & Wise, P.C., Houston, Texas.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and James Frances LaMotta ("LaMotta"), hereinafter collectively referred to as "Respondents," were represented by Jack D. Ballard, Esq., The Ballard Law Firm, Houston, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 21, 2004. The Submission Agreement of Claimants was signed on or about April 20, 2004.

The Statement of Answer was filed jointly by Respondents on or about July 19, 2004. The Submission Agreement of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., was signed on or about June 29, 2004. The Submission Agreement of Respondent, James Frances LaMotta, was signed on or about June 29, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: violations of Section 33A of the Texas Securities Act by misrepresenting the suitability of the securities recommended to Claimants and/or failure to disclose the unsuitability of the securities that were recommended to Claimants and violations of Section 33(1) of the Texas Securities Act, which imposes liability on a person who directly or indirectly controls a seller to the same extent as if he were the seller. The causes of action related to the recommendation and purchase of various unspecified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: (i) Claimants waived any claims they might have had, (ii) Claimants ratified, approved, accepted, acquiesced and confirmed in all respects the acts complained of, (iii) Respondents at all times acted properly, in good faith and in a commercially reasonable manner with respect to Claimants' accounts, (iv) Claimants assumed the risks of the investments that they made through Respondents, (v) Claimants' claims were barred by laches, (vi) Claimants failed to mitigate their damages, (vii) the alleged damages sustained by Claimants, if any, were a result of market forces and/or their own negligence and not the result of any act or omission on the part of Respondents, (viii) Respondents did not violate any statute of the Texas Securities Act, (ix) some or all of Claimants' claims were barred by the applicable statute of limitations.

In addition, Merrill Lynch asserted a Counterclaim against David Paschall alleging that as a fiduciary he had non-delegable duties and that in the event any of the investments were found to be unsuitable, David Paschall was responsible for any losses arising from those investments. Moreover, Merrill Lynch alleged that David Paschall breached his duty of reasonable care in connection with the investments, which was the cause of any damages.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$1,220,910.00
Punitive/Exemplary Damages	Unspecified
Attorneys' Fees	Unspecified
Interest	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested dismissal of the Statement of Claim in its entirety, their attorneys' fees, costs and the assessment of all forum and other fees and costs against

Claimants. Respondent LaMotta further requested that the Panel enter an order of expungement removing the case from his CRD record with NASD Regulation.

In connection with the Counterclaim, Merrill Lynch sought contribution and/or indemnity from David Paschall based upon his actions in connection with the accounts as well as reasonable attorneys' fees and expenses.

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

On or about April 15, 2006, Claimants' counsel sent an e-mail to NASD that the parties have entered into a settlement agreement.

On April 17, 2006, the parties met in-person before the Panel to present oral arguments regarding the proposed expungement request for Respondent LaMotta. The Panel considered the issue of the expungement. On April 18, 2006, the Panel notified NASD of its decision to grant LaMotta's request for an expungement.

On April 28, 2006, the parties entered into an agreement to dismiss this arbitration. Pursuant to the agreement, Claimants would dismiss with prejudice their claims against Respondents under certain terms and conditions and Respondent Merrill Lynch would dismiss with prejudice its Counterclaim against Claimant, David Paschall.

### **AWARD**

After considering the pleadings, testimony, and evidence presented at the prehearing, and the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted by the Claimants, D David A. Paschall and Stephen Paschall, as the Beneficiaries of the John P. Paschall Trust, David A. Paschall, as Independent Executor of the Estate of Betty Paschall, David Paschall, Individually and Mary F. Paschal, are dismissed with prejudice;
2. The Counterclaim asserted against Claimant, David Paschall, by Respondent, Merrill Lynch, is dismissed with prejudice;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent, James Frances LaMotta's, registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent, James Frances LaMotta, must obtain

confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is false.

4. The parties shall bear their own costs of arbitration, except for those sums specifically enumerated herein; and

5. Any and all relief not specifically addressed herein, including punitive damages and attorneys' fees, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
Counterclaim 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. In this matter, the member firm is Merrill Lynch, Pierce, Fenner & Smith, Inc.

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings:

August 23-26, 2005, adjournment requested by Claimants = \$ 1,200.00

**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:

April 18-21 and 24-28, 2006, notification of settlement on 4/15/06 = \$ 300.00

**Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. A hearing 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*. Forum fees associated with these proceedings are:

One (1) Decision on discovery-related motions on the papers  
with one (1) arbitrator x \$200.00 = \$ 200.00  
Claimants submitted one (1) discovery-related motion

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 900.00  
Pre-hearing conferences: November 14, 2005 1 session  
February 21, 2006 1 session

Four (4) Pre-hearing sessions with Panel x \$1,200.00 = \$ 4,800.00  
Pre-hearing conferences: October 5, 2004 1 session  
July 11, 2005 1 session  
August 9, 2005 1 session  
August 11, 2005 1 session

One (1) Hearing session with Panel x \$1,200.00 = \$ 1,200.00  
Hearing session: April 17, 2005 1 session  

---

Total Forum Fees = \$ 7,100.00

The Arbitration Panel has assessed \$3,550.00 of the forum fees to jointly and severally to David A. Paschall and Stephen Paschall, as the Beneficiaries of the John P. Paschall Trust, David A. Paschall, as Independent Executor of the Estate of Betty Paschall, David Paschall, Individually and Mary F. Paschall.

The Arbitration Panel has assessed \$3,550.00 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith, Inc.

**Fee Summary**

Claimants, D David A. Paschall and Stephen Paschall, as the Beneficiaries of the John P. Paschall Trust, David A. Paschall, as Independent Executor of the Estate of Betty Paschall, David Paschall, Individually and Mary F. Paschall, are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Three Day Cancellation Fee	= \$ 150.00
Adjournment Fee	= \$ 1,200.00
Forum Fee	= \$ 3,550.00
<u>Total Fees</u>	<u>= \$ 5,400.00</u>
<u>Less payments</u>	<u>= \$ 1,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,700.00

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

Initial Filing Fee	= \$ 500.00
Three Day Cancellation Fee	= \$ 150.00
Member Fees	= \$ 8,550.00
Forum Fees	= \$ 3,550.00
<u>Total Fees</u>	<u>= \$12,750.00</u>
<u>Less payments</u>	<u>= \$10,850.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,900.00

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

**ARBITRATION PANEL**

Howard J. Siegel, J.D. - Public Arbitrator, Presiding Chairperson  
Frank M. Romano - Public Arbitrator  
James M. Alexander - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Howard J. Siegel, J.D.  
Howard J. Siegel, J.D.  
Public Arbitrator, Presiding Chairperson

May 22, 2006  
Signature Date

/s/ Frank M. Romano  
Frank M. Romano  
Public Arbitrator

May 22, 2006  
Signature Date

/s/ James M. Alexander  
James M. Alexander  
Non-Public Arbitrator

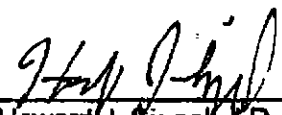
May 24, 2006  
Signature Date

May 24, 2006  
Date of Service (For NASD office use only)

ARBITRATION PANEL

Howard J. Siegel, J.D. - Public Arbitrator, Presiding Chairperson  
Frank M. Romano - Public Arbitrator  
James M. Alexander - Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Howard J. Siegel, J.D.  
Public Arbitrator, Presiding Chairperson

5/22/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Frank M. Romano  
Public Arbitrator

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

\_\_\_\_\_  
James M. Alexander  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)



ARBITRATION PANEL

Howard J. Siegel, J.D. - Public Arbitrator, Presiding Chairperson  
Frank M. Romano - Public Arbitrator  
James M. Alexander - Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Howard J. Siegel, J.D.  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Frank M. Romano  
Public Arbitrator

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

\_\_\_\_\_  
James M. Alexander  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

ARBITRATION PANEL

Howard J. Siegel, J.D. - Public Arbitrator, Presiding Chairperson  
Frank M. Romano - Public Arbitrator  
James M. Alexander - Non-Public Arbitrator


Concurring Arbitrators' Signatures

\_\_\_\_\_  
Howard J. Siegel, J.D.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Frank M. Romano  
Public Arbitrator

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

  
\_\_\_\_\_  
James M. Alexander  
Non-Public Arbitrator

5-24-06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)