

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

---

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-03408

James W. Coe

Names of the Respondents

Hearing Site: Richmond, Virginia

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
John T. Holland

---

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

**REPRESENTATION OF PARTIES**

Claimant James W. Coe, hereinafter referred to as "Claimant", was represented by Shawn P. George, Esq., George & Lorensen, PLLC, Charleston, West Virginia.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and John T. Holland ("Holland"), hereinafter collectively referred to as "Respondents", were represented by Brin Hale, Esq. and Carranza M. Pryor, Esq., Sutherland Asbill & Brennan, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on May 5, 2004.

Claimant signed the Uniform Submission Agreement on May 5, 2004.

Statement of Answer filed by Respondents on July 2, 2004.

Respondent Holland signed the Uniform Submission Agreement on June 28, 2004.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on June 28, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: Respondents made unsuitable recommendations and failed to properly allocate the account maintained by the Claimant. Claimant asserted claims for negligence, breach of fiduciary duty, common law fraud, violation of the West Virginia Uniform Securities Act (W. Va. Code §32-4-410), violation of the West Virginia Consumer Credit & Protection Act (W. Va. Code §46A-6-101 *et seq.*), and breach of contract. The causes of action relate to the purchase of various unspecified equity mutual funds, exchange traded funds, fixed income mutual funds, and other fixed income securities in Claimant's account.

Unless specifically admitted in their Answer, Respondents Merrill Lynch and Holland denied all allegations made in the Statement of Claim and asserted the following defenses: all trades were suitable and authorized by Claimant, and Claimant's claims are barred by applicable statutes of

limitations and by ratification, waiver, laches, unclean hands, and estoppel.

**RELIEF REQUESTED**

Claimant requested compensatory damages of \$250,000.00, punitive damages, attorneys' fees, expert witness fees, costs, expenses, interest, and other and further relief as the Arbitration Panel deems just and proper.

Respondents requested an award rejecting Claimant's Statement of Claim in its entirety; directing that the registration file of Respondent Holland be expunged of any reference to this claim; and assessing all forum fees and costs against Claimant.

**OTHER ISSUES CONSIDERED AND DECIDED**

Prior to the hearing the parties fully and finally settled all claims by and between them. Therefore, the parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

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

**AWARD**

Pursuant to the above, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are dismissed with prejudice;
2. The Panel recommends the expungement of all references to the above-captioned arbitration from the registration records maintained by the NASD Central Registration Depository ("CRD") for Respondent Holland, with the understanding that pursuant to NASD Notices to Members 99-90 and 99-54, Respondent Holland must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### 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 = \$ 300.00

#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Total Member Fees = \$5,200.00

#### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: November 29, 2004 1 session

Total Forum Fees = \$1,125.00

1. The Panel has assessed \$562.50 of the forum fees to Claimant.

2. The Panel has assessed \$562.50 of the forum fees jointly and severally to Respondents.

### FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 562.50

Total Fees = \$ 862.50

Less payments = \$1,425.00

Balance Due NASD Dispute Resolution = \$ 562.50

2. Respondent Merrill Lynch is assessed and shall pay the following fees:

Member Fees = \$5,200.00

Total Fees = \$5,200.00

Less payments = \$5,200.00

Balance Due NASD Dispute Resolution = \$ 0.00

3. Respondents are jointly and severally assessed and shall pay the following fees:

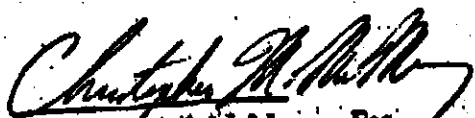
<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 562.50

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

ARBITRATION PANEL

Christopher M. McMurray, Esq.	-	Public Arbitrator, Presiding Chairperson
William J. Pantele, Esq.	-	Public Arbitrator, Panelist
John D. Robb	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Christopher M. McMurray, Esq.  
Public Arbitrator, Presiding Chairperson

2/22/06  
Signature Date

\_\_\_\_\_  
William J. Pantele, Esq.  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
John D. Robb  
Non-Public Arbitrator, Panelist

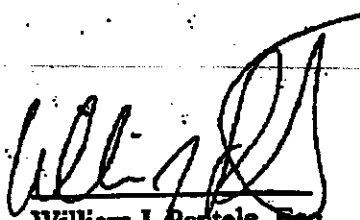
\_\_\_\_\_  
Signature Date

March 10, 2006  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Christopher M. McMurray, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

  
William J. Pantele, Esq.  
Public Arbitrator, Panelist

3/3/06  
Signature Date

John D. Robb  
Non-Public Arbitrator, Panelist

Signature Date

March 10, 2006  
Date of Service (For NASD Dispute Resolution office use only)


Concurring Arbitrators' Signatures

\_\_\_\_\_  
Christopher M. McMurray, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
William J. Pantele, Esq.  
Public Arbitrator, Panelist

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

  
\_\_\_\_\_  
John D. Robb  
Non-Public Arbitrator, Panelist

2-20-06  
Signature Date

March 10, 2006  
Date of Service (For NASD Dispute Resolution office use only)