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

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In the Matter of the Arbitration Between:

Names of the Claimants

Douglas C. Pierson  
Patricia M. Pierson

Case Number: 04-03559

Names of the Respondents

Merrill Lynch, Pierce Fenner & Smith Inc.  
H. James Atwood  
Michael J. Northcott

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Douglas C. Pierson and Patricia M. Pierson, hereinafter collectively referred to as "Claimants": Neil A. Sussman, Esq., Sussman and Frankel, LLP, New York, New York and Gregory S. Mertz, Esq., Mertz, Talbot & Simonds, PLC, Burlington, Vermont.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), H. James Atwood ("Atwood"), and Michael J. Northcott ("Northcott"), hereinafter collectively referred to as "Respondents": Terry R. Weiss, Esq. and Thomas A. Farnen, Esq., Sutherland Asbill & Brennan LLP, Atlanta, Georgia.

**CASE INFORMATION**

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

Claimants signed but did not date the Uniform Submission Agreement.

Statement of Answer filed by Respondents on or about: August 13, 2004.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 1, 2004.

Respondent Atwood signed the Uniform Submission Agreement: November 30, 2004.

Respondent Northcott signed but did not date the Uniform Submission Agreement.

Motion to Dismiss filed by Respondents on or about: December 20, 2004.

Opposition to Respondents' Motion to Dismiss filed by Claimants on or about: January 7, 2005.

Reply in Support of Motion to Dismiss filed by Respondents on or about: January 27, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: fraud, misrepresentation and omission of material fact; churning; trading without written authorization; breach of fiduciary duty; breach of contract; negligence; violation of Section 10(b) of the Securities Exchange Act of 1934, and 15

U.S.C. §78t(a), Rule 10b-5 promulgated thereunder and 17 C.F.R. § 240.10b-5; violation of section 517 Florida Statutes; and failure to supervise. The causes of action relate to activities in Claimants' account including the purchase and sale of shares of stock in Waters Corp., purchases made on margin, options, and other unspecified transactions.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: All trades were suitable and authorized by Claimants, Claimants' claims are barred by applicable statutes of limitations and by ratification, waiver, laches, unclean hands, and estoppel. Furthermore, Respondent Merrill alleged that it maintained an adequate and reasonable system of supervision and control over its employees.

### **RELIEF REQUESTED**

Claimants requested unspecified compensatory damages; unspecified punitive damages; return of the excessive commissions and margin interest Respondents charged Claimants as a result of their churning of Claimants' accounts; interest on the assets entrusted to Respondents annually since 1998; voiding of all losing trades resulting in damages; attorneys' fees; treble damages; and such further relief as is just and proper.

Respondents requested that all claims be dismissed in their entirety, that forum fees be borne by Claimants, and that all references to this matter be expunged from the NASD Central Registration Depository ("CRD") records of Respondents Atwood and Northcott.

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

The undersigned arbitrators (the "Panel") denied Respondents' Motion to Dismiss by Order dated January 21, 2005.

Prior to the hearing the parties fully and finally settled all claims by and between them.

On or about June 3, 2005, Respondents submitted to NASD Dispute Resolution a proposed Stipulated Award jointly agreed to by the parties in resolution of this matter, containing the language set forth below.

The parties stipulated and agreed that Respondent Northcott sent numerous activity letters to the Claimants and personally discussed with them on several occasions both the level of activity and the risks associated with the trading in their accounts. Accordingly, the Respondents requested that the Panel make affirmative findings and order expungement of all references to the above-captioned arbitration from the registration records maintained by NASD Central Registration Depository ("CRD") for Respondent Northcott, with the understanding that, pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Northcott must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Based upon Respondent Northcott's request, the panel finds that Respondent Northcott maintained an adequate and reasonable system of supervision and further finds, pursuant to NASD Notices to Members 04-16, that Respondent Northcott was not involved in the alleged sales practice violations. The Panel therefore recommends the expungement of all references to the above-captioned arbitration from the NASD CRD registration records of Respondent Northcott.

The parties stipulated and agreed that Respondent Atwood managed Claimants' accounts from 1998 to 2003, and that during the relevant time period the Claimants' accounts generated net profits in excess of \$200,000.00. Accordingly, the Respondents requested that the Panel make affirmative findings and order expungement of all reference to the above-captioned arbitration from the registration records maintained by NASD CRD for Respondent Atwood, with the understanding that, pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Atwood must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Based upon Respondent Atwood's request, the panel finds pursuant to NASD Notice to Members 04-16, that Respondent Atwood was not involved in the alleged sales practice violations. The Panel therefore recommends the expungement of all references to the above captioned arbitration from the NASD CRD registration records of Respondent Atwood.

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

1. All Respondents are dismissed with prejudice;
2. Based upon Respondent Northcott's request, the panel finds that Respondent Northcott maintained an adequate and reasonable system of supervision and further finds, pursuant to NASD Notices to Members 04-16, that Respondent Northcott was not involved in the alleged sales practice violations. The Panel therefore recommends the expungement of all references to the above-captioned arbitration from the NASD CRD registration records of Respondent Northcott, with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Northcott must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Based upon Respondent Atwood's request, the panel finds pursuant to NASD Notice to Members 04-16, that Respondent Atwood was not involved in the alleged sales practice violations. The Panel therefore recommends the expungement of all references to the above captioned arbitration from the NASD CRD registration records of Respondent Atwood, with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Atwood 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 of the NASD Code of Arbitration Procedure (the "Code"), the arbitration panel has made the following affirmative findings of fact:

The registered persons were not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

3. The parties shall bear their respective costs, including attorneys' fees. Any fees specifically incurred in connection with the review of this proposed stipulated agreement will be assessed against Respondents.
4. Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive damages and attorneys' fees, are denied in their 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	= \$ 250.00
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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 Merrill Lynch is a member firm and a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00
Total Member Fees	= \$4,450.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment 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:

There were no three-day cancellation fees assessed during these proceedings.

#### **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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conferences: January 11, 2005 1 session	
One (1) Pre-hearing session with Panel @ \$1,000.00	= \$1,000.00
Pre-hearing conferences: November 16, 2004 1 session	
<u>Total Forum Fees</u>	<u>= \$1,450.00</u>

Pursuant to the agreement of the parties, the Panel has assessed the total forum fees of \$1,450.00 to Respondents Merrill Lynch, Atwood, and Northcott, 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 during these proceedings.

#### Fee Summary

- Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 250.00
Retained Hearing Session Deposit	
<u>pursuant to Rule 10332(f) of the Code</u>	<u>= \$1,000.00</u>
<u>Total Fees</u>	<u>= \$1,250.00</u>
<u>Less payments</u>	<u>= \$1,250.00</u>
<u>Balance Due NASD Dispute Resolution</u>	<u>= \$ 0.00</u>
- Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	<u>= \$ 4,450.00</u>
<u>Total Fees</u>	<u>= \$ 4,450.00</u>
<u>Less payments</u>	<u>= \$ 4,450.00</u>
<u>Balance Due NASD Dispute Resolution</u>	<u>= \$ 0.00</u>
- Respondents Merrill Lynch, Atwood and Northcott are jointly and severally liable for:

<u>Forum fees:</u>	<u>= \$ 1,450.00</u>
<u>Total Fees</u>	<u>= \$ 1,450.00</u>
<u>Less payments</u>	<u>= \$ 0.00</u>
<u>Balance Due NASD Dispute Resolution</u>	<u>= \$ 1,450.00</u>

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

#### ARBITRATION PANEL

David Sweeney, Esq.	-	Public Arbitrator, Presiding Chairperson
Albert Fox	-	Public Arbitrator
Fred A. Forbes, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Albert Fox  
Public Arbitrator

June 13, 2005  
Signature Date

/s/  
Fred A. Forbes, Jr.  
Non-Public Arbitrator

June 13, 2005  
Signature Date

**Dissenting Arbitrator's Signature**

/s/  
David Sweeney, Esq.  
Public Arbitrator, Presiding Chairperson

June 13, 2005  
Signature Date

June 13, 2005

Date of Service (For NASD Dispute Resolution use only)

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Concurring Arbitrators' Signatures



Albert Fox  
Public Arbitrator

6/13/05

Signature Date

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Fred A. Forbes, Jr.  
Non-Public Arbitrator

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

Dissenting Arbitrator's Signature

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David Sweeney, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

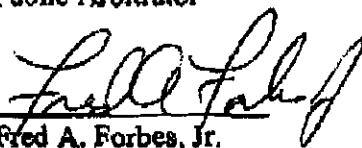
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6-13-05  
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Public Arbitrator, Presiding Chairperson

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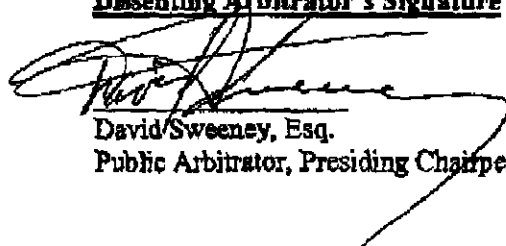
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David Sweeney, Esq.  
Public Arbitrator, Presiding Chairperson

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