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

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In the Matter of the Arbitration Between:

Name of the Claimant

Kathryn Aho, Personal Representative  
for the Estate of Inez Helms

Case Number: 04-03659

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith Incorporated  
Paul Francis Luther, Merrill Lynch Financial Consultant

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Kathryn Aho, Personal Representative for the Estate of Inez Helms, hereinafter referred to as "Claimant":  
Charles R. Aho, Attorney in Fact, New Ipswich, New Hampshire.

For Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS") and Paul Francis Luther, Merrill Lynch  
Financial Consultant ("Luther"), hereinafter collectively referred to as "Respondents": Craig R. Glasser, Esq.,  
Baritz & Coleman, LLP, Boca Raton, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: May 17, 2004.

Claimant signed the Uniform Submission Agreement: May 13, 2004.

Statement of Answer filed by Respondents on or about: July 19, 2004.

Respondent MLPFS signed the Uniform Submission Agreement: June 28, 2004.

Respondent Luther signed the Uniform Submission Agreement: July 23, 2004.

Response to the Respondents' Answer and Affirmative Defenses filed by Claimant on or about: November 12,  
2004.

**CASE SUMMARY**

Claimant sued Respondents to recover for negligence, breach of fiduciary duty, unsuitability of investments,  
misrepresentations and omissions, negligent supervision, and respondeat superior. The causes of action  
relate to the purchase in Claimant's account of various communication stocks, including WorldCom.

Respondents denied Claimant's allegations and set forth numerous affirmative defenses to the claims  
presented.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$628,000.00 and punitive damages in the amount of \$500,000.00.

Respondents requested dismissal of Claimant's Statement of Claim, expungement of this matter from the NASD Central Registration Depository ("CRD") records of Respondent Luther, reimbursement of attorneys' fees and arbitration costs as well as forum and/or processing fees associated with the defense thereof, and such other and further relief as deemed just and proper by the Panel.

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

On or about May 23, 2005, Claimant filed with NASD Dispute Resolution a notice of dismissal of all claims against Respondents, with prejudice.

On or about July 5, 2005, the parties filed with NASD Dispute Resolution a proposed Stipulated Award for review and approval by the Panel.

Prior to execution of the Stipulated Award, one of the public arbitrators withdrew from the Panel. Thereafter, the parties jointly elected to proceed with the two remaining arbitrators.

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

### **AWARD**

Based upon the facts presented in the pleadings, motions and other papers filed in this case (see *Case Information* above), the stipulation of the parties, and the authority of this Panel, it is hereby ordered that:

1. Claimant's dismissal of claims is accepted and Respondents are dismissed from this matter, with prejudice.
2. The Panel affirmatively finds that (1) the claims, allegations, or information are factually impossible or clearly erroneous; (2) Respondent Luther was not involved in the alleged investment-related sales practice violations; and (3) the claims, allegations, or information are false.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Luther's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Luther must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **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 = \$ 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. Accordingly, Respondent MLPFS is a member firm and a party:

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

**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 Arbitrator.

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:

One (1) Pre-hearing session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: October 20, 2004 1 session	

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Total Forum Fees	= \$1,200.00
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The Panel has assessed forum fees as follows:

\$600.00 to Claimant  
\$600.00 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	= \$ 500.00
Forum Fees	= \$ 600.00
Total Fees	= \$1,100.00
Less payments	= \$1,100.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

Member Fees	= \$8,550.00
Total Fees	= \$8,550.00
Less payments	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Lee E. Karofsky, J.D.	-	Public Arbitrator
Edwin J. Slovitt, CLU, ChFC	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
\_\_\_\_\_  
Lee E. Karofsky, J.D.  
Public Arbitrator

July 12, 2005  
Signature Date

/s/  
\_\_\_\_\_  
Edwin J. Slovitt, CLU, ChFC  
Non-Public Arbitrator

July 12, 2005  
Signature Date

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

FROM : LEE KAROFISKY  
JUL 12 2005 4:20PM

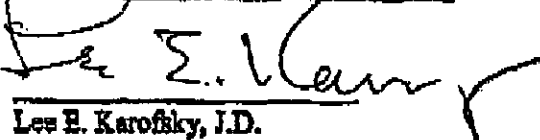
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Concurring Arbitrators' Signatures



Lee E. Karofsky, J.D.  
Public Arbitrator

7/12/05  
Signature Date

Edwin J. Slovitt, CLU, ChFC  
Non-Public Arbitrator

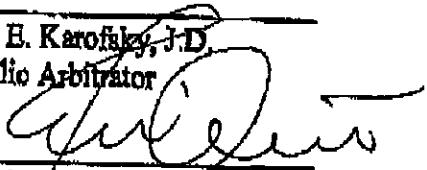
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Lee E. Karofsky, J.D.  
Public Arbitrator



Edwin J. Slovitt, CLU, ChFC  
Non-Public Arbitrator

Signature Date

2/12/05

Signature Date

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