

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Shirley A. Lundquist

Case Number: 04-04701

Name of the Respondents  
MONY Securities Corporation,  
Executive Financial Group a/k/a  
A.K.J. LTD., and Thomas P. Olexa

Hearing Site: Chicago, Illinois

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

**REPRESENTATION OF PARTIES**

Claimant, Shirley A. Lundquist, hereinafter referred to as "Claimant", was represented by James Eccleston and Ronald Amato of Shaheen, Novoselskey, Staat, Filipowski & Eccleston, P.C., located in Chicago, Illinois.

Respondents, MONY Securities Corporation, Executive Financial Group a/k/a A.K.J. LTD., and Thomas P. Olexa, hereinafter collectively referred to as "Respondents," were represented by Andrew W. Davitt, Esq. of Marshall, Dennehey, Warner, Coleman & Goggin, P.C., located in Philadelphia, Pennsylvania.

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**CASE INFORMATION**

Statement of Claim filed on or about: June 30, 2004

Claimant submitted an undated signed Uniform Submission Agreement.

Preliminary Answer, Affirmative Defenses, Motion to Dismiss and Motion for a More Specific Statement of Claim filed by Respondents on or about: December 6, 2004.

Respondents, MONY Securities Corporation, Executive Financial Group and Thomas Olexa, did not submit signed Uniform Submission Agreements.

**CASE SUMMARY**

The causes of action related to Claimant's purchase of two variable annuities and various mutual funds during the recent bear market. Claimant asserted the following causes of action, among others: violations of federal and state securities laws, breach of fiduciary duty, negligence, breach of contract, failure to supervise (negligent supervision), and respondeat superior. The causes of action relate to funds invested in the Enterprise mutual fund family, such as the Growth Fund, Capital Appreciation Fund, International Growth Fund, Internet Fund and Multi-Cap Growth Fund. The non-IRA annuity investments included Growth, VIP Growth, Aspen Worldwide Growth, Small Company Growth, VIPII Contrafund and Multicap Growth.

Unless specifically admitted in their Preliminary Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; ratification; waiver; the doctrines of estoppel and/or laches; statutes of limitations; failure to exercise due care and diligence; contributory and/or comparative negligence. Respondents set forth that the investments at issue were suitable for Claimant's expressed objectives and risk tolerance and declined in value in line with the bear market.

#### **RELIEF REQUESTED**

Claimant requested the following damages:

Compensatory Damages	\$ 325,759
Punitive Damages	amount unspecified
Attorney's Fees	amount unspecified
Other Costs and Expenses	amount unspecified

Respondents requested that the Statement of Claim be dismissed in its entirety and that an Order be entered directing the expungement of any reference to these matters from Respondent Thomas Olexa's records maintained at NASD's Central Registration Depository ("CRD").

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

Respondents, MONY Securities Corporation and Thomas P. Olexa, did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but are required to submit to arbitration pursuant to the Code and, having answered the claim and appeared in this matter, are bound by the determination of the Panel on all issues submitted.

Claimant withdrew all claims against Respondents on December 21, 2005.

As such, prior to the hearing, the Parties fully resolved all issues 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. The listed parties have amenablely resolved their differences and have requested this Stipulated Award;
2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Thomas Olexa's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Thomas Olexa 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 an affirmative finding of fact that the claim, allegation, or information is false.
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 at the time of the events giving rise to the dispute. Accordingly, MONY Securities Corporation is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
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 arbitrators, including a pre-hearing conference with the arbitrators that lasts four (4) hours or less. Fees associated with these proceedings are:

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

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00  
Pre-hearing Conference February 16, 2005 1 session  
Total Forum Fees = \$1,325.00

Pursuant to NASD Rule 10306(c), forum fees are split equally to the parties as follows:

1. Claimant, Shirley A. Lundquist, is solely liable for the amount of \$331.25 in forum fees;
2. Respondent, MONY Securities, is solely liable for the amount of \$331.25 in forum fees;
3. Respondent, Executive Financial Group a/k/a A.K.J LTD, is solely liable for \$331.25 in forum fees; and
4. Respondent, Thomas P. Olexa, is solely liable for \$331.25 in forum fees.

**FEE SUMMARY**

1. Claimant, Shirley A. Lundquist, is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 331.25
Total Fees	= \$ 631.25
Less payments	= \$1,425.00
Refund amount transferred to NASD Mediation	= \$ 793.75

2. Respondent, Thomas Olexa, is solely liable for:

Forum Fees	= \$ 331.25
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 331.25

3. Respondent, MONY Securities Corporation, is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$ 331.25
Total Fees	= \$5,531.25
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 331.25

4. Respondent, Executive Financial Group, a/k/a A.K.J. LTD., is solely liable for: 00.00

Forum Fees	= \$ 331.25
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 331.25

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

**ARBITRATION PANEL**

John J. Enright, Esq.	-	Public Arbitrator, Presiding Chairperson
Gregory D. Bruno, Esq.	-	Public Arbitrator, Panelist
Dwight R. Erskine, II, CFP	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

/s/ John J. Enright, Esq.  
John J. Enright, Esq.  
Public Arbitrator, Presiding Chairperson

1/26/06  
Signature Date

/s/ Gregory D. Bruno, Esq.  
Gregory D. Bruno, Esq.  
Public Arbitrator, Panelist

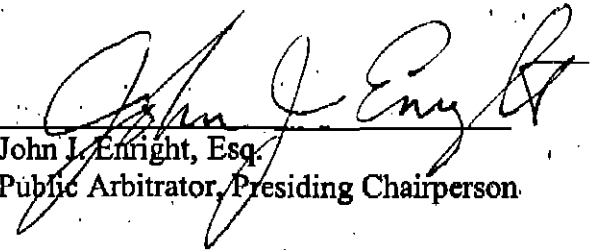
1/25/06  
Signature Date

/s/ Dwight R. Erskine, II, CFP  
Dwight R. Erskine, II, CFP  
Non-Public Arbitrator, Panelist

1/25/06  
Signature Date

1/30/06  
Date of Service (For NASD Dispute Resolution office use only)

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\_\_\_\_\_  
John I. Enright, Esq.  
Public Arbitrator, Presiding Chairperson

1/26/06  
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Signature Date

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Gregory D. Bruno, Esq.  
Public Arbitrator, Panelist

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NASD Dispute Resolution, Inc.

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Public Arbitrator, Presiding Chairperson

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Public Arbitrator, Panelist

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Public Arbitrator, Panelist

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Signature Date

  
Dwight R. Erskine, II, CFP  
Non-Public Arbitrator, Panelist

2/25/2008  
Signature Date

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