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

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In the Matter of the Arbitration Between:

Name of the Claimant  
James T. Keefe Jr. IRA

Case Number: 04-07848

Names of the Respondents  
Merrill Lynch Pierce Fenner & Smith, Inc.  
Anthony Francis Hartigan  
William Wright Bourbeau

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For James T. Keefe Jr. IRA, hereinafter referred to as "Claimant": Scott L. Silver, Esq., Blum & Silver, LLP, Coral Springs, Florida.

For Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS"), Anthony Francis Hartigan ("Hartigan") and William Wright Bourbeau ("Bourbeau"), hereinafter collectively referred to as "Respondents": Alan M. Wolper, Esq. and Bryan M. Ward, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: November 9, 2004.

Claimant signed the Uniform Submission Agreement: December 3, 2004.

Statement of Answer filed by Respondents on or about: February 4, 2005.

Respondent MLPFS signed the Uniform Submission Agreement: December 1, 2004.

Respondents Hartigan and Bourbeau signed Uniform Submission Agreements: February 1, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of industry rules, including but not limited to the NYSE's "Know your customer" standard (Rule 405) and the NASD's customer suitability standard (Rule 2310); breach of contract; breach of fiduciary duty; unsuitability; common law fraud; negligence; and, negligent hiring, retention and supervision of employees. The causes of action relate to the investment in Claimant's account of various technology stocks, including but not limited to, America Online, Network Appliance, Compaq Computer and EMC.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: All trades and the overall account allocations were suitable for and authorized by Claimant; Claimant failed to state a claim; the

Statement of Claim is barred by applicable statutes of limitations, the equitable doctrine of laches, unclean hands, estoppel, waiver, and ratification.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of approximately \$2,500,000.00, interest at the legal rate from the date of purchase or reasonable market return, rescission, punitive damages, costs of the arbitration proceeding and such other relief as is just and proper.

Respondents requested that the Panel issue an award rejecting Claimant's Statement of claim in its entirety and ordering all forum fees be borne by Claimant. In addition, Respondents requested expungement of all references to this arbitration from Respondents Hartigan and Bourbeau NASD Central Registration Depository ("CRD") records.

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

On or about February 16, 2006, Claimant dismissed all claims against Respondent Hartigan, with prejudice.

On or about March 8, 2006, Claimant notified NASD Dispute Resolution that the parties had fully and finally settled all claims by and between them and that a proposed Stipulated Award was forthcoming.

On or about March 16, 2006, the parties jointly filed with NASD Dispute Resolution a proposed Stipulated Award with a Stipulated Request for Expungement of the NASD CRD records of Respondents Hartigan and Bourbeau.

The parties stipulate and agree that (1) Respondent Hartigan did not service Claimant's Merrill Lynch accounts during the time at issue; (2) Respondent Hartigan did not recommend any of the transactions at issue; (3) Respondent Hartigan was not involved in any of the alleged sales practice violations; (4) Claimant directed the purchases at issue; (5) Respondent Bourbeau did not recommend the purchases at issue; (6) during the time at issue, Respondent Bourbeau informed claimant to sell the securities at issue that Claimant now claims have been unsuitable for him; and (7) the facts of this case support the requisite findings for expungement specified below.

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

### **AWARD**

After considering the pleadings and the Stipulated Request for Expungement, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents are dismissed with prejudice.

The parties shall bear their respective costs, including attorneys' fees, except as fees are specifically addressed below.

Based on the parties' stipulations and pursuant to Rule 2130, the Panel has made the following affirmative findings of fact:

1. The claims against Respondent Hartigan are factually impossible or clearly erroneous.
2. Respondent Hartigan was not involved in the alleged investment-related sales practice violations.
3. The claims against Respondent Hartigan are false.
4. The claims against Respondent Bourbeau are factually impossible or clearly erroneous.
5. Respondent Bourbeau was not involved in the alleged investment-related sales practice violations.
6. The claims against Respondent Bourbeau are false.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Hartigan and Bourbeau's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondents Hartigan and Bourbeau must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by 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.

Any and all claims for relief not specifically addressed herein including Claimant's request for punitive damages, are denied.

### **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 firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm Merrill Lynch Pierce Fenner & Smith, Inc. is 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 Panel.

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$2,400.00
Pre-hearing conferences: March 22, 2005	1 session
December 7, 2005	1 session

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Total Forum Fees	= \$2,400.00
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The Panel has assessed \$1,200.00 of the forum fees to Claimant.

The Panel has assessed \$1,200.00 of the forum fees jointly and severally to Respondents.

**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 are 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	= \$ 1,200.00
Total Fees	= \$ 1,700.00
Less payments	= \$ 1,700.00
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	= \$ 1,200.00
Total Fees	= \$ 1,200.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

**ARBITRATION PANEL**

Robert T. Allen, Jr.	-	Public Arbitrator, Presiding Chairperson
Howard I. Wilgoren, Esq.	-	Public Arbitrator
G. Robert Abrams, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Robert T. Allen, Jr.  
Public Arbitrator, Presiding Chairperson

March 21, 2006  
Signature Date

/s/  
Howard I. Wilgoren, Esq.  
Public Arbitrator

March 21, 2006  
Signature Date

/s/  
G. Robert Abrams, Esq.  
Non-Public Arbitrator

March 21, 2006  
Signature Date

March 22, 2006  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Robert T. Allen, Jr.  
Robert T. Allen, Jr.  
Public Arbitrator, Presiding Chairperson

3-21-06  
Signature Date

Howard I. Wilgoren, Esq.  
Howard I. Wilgoren, Esq.  
Public Arbitrator

Signature Date

G. Robert Abrams, Esq.  
G. Robert Abrams, Esq.  
Non-Public Arbitrator

Signature Date

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

Arbitration No. 04-07848

Stipulated Award Page 6 of 6

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Robert T. Allen, Jr.  
Public Arbitrator, Presiding Chairperson

  
\_\_\_\_\_  
Howard J. Wilgoren, Esq.  
Public Arbitrator

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

3-21-06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
G. Robert Abrams, Esq.  
Non-Public Arbitrator

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

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



ARBITRATION PANEL

Howard I. Wilgoren, Esq.	-	Chair, Public Arbitrator
Robert T. Allen, Jr.	-	Public Arbitrator
G. Robert Abrams, Esq.	-	Non-Public Arbitrator

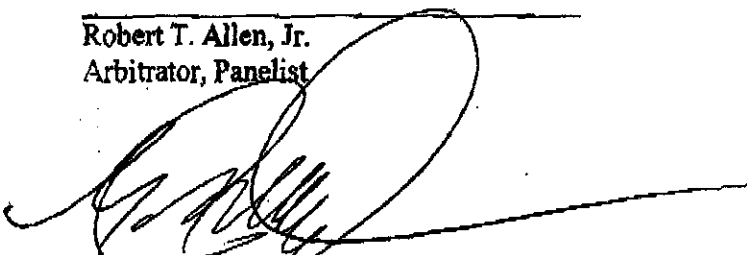
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\_\_\_\_\_  
Howard I. Wilgoren, Esq.  
Arbitrator, Chair

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

\_\_\_\_\_  
Robert T. Allen, Jr.  
Arbitrator, Panelist

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

  
\_\_\_\_\_  
G. Robert Abrams, Esq.  
Arbitrator, Panelist

  
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Signature Date

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