

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

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In the Matter of the Arbitration Between:

Daniel J. Chiljean (Claimant) vs. Merrill, Lynch, Pierce, Fenner & Smith, Inc. (Respondent)

Case Number: 05-00648

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

Claimant Daniel J. Chiljean hereinafter referred to as "Claimant": Robert T. Barnard, Esq., Thompson & Hine, New York, NY. Previously represented by Richard S. Heller, Esq., and Thomas C. Frost, Esq., Shustak Jalil & Heller, New York, NY.

Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. hereinafter referred to as "Respondent": Theodore P. Bell, Esq. and Carole G. Miller, Esq., Maynard, Cooper & Gale, P.C., Birmingham, AL.

**CASE INFORMATION**

Statement of Claim filed on or about: February 2, 2005.

Claimant signed the Uniform Submission Agreement: January 24, 2005.

Statement of Answer filed by Respondent on or about: April 14, 2005.

Respondent signed the Uniform Submission Agreement: April 13, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: defamation, libel and slander per se, breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, wrongful termination, common law fraud, intentional misrepresentation, negligent and/or intentional interference with prospective economic advantage, negligent and/or intentional infliction of emotional distress, violations of NASD and NYSE Rules, respondeat superior, and failure to supervise.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$3,000,000.00 plus interest, attorneys' fees, punitive damages, and such other and further relief as the Panel may deem just, fair and equitable.

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Respondent requested dismissal of the Statement of Claim in its entirety, costs, attorneys' fees, and such other and further relief as the Panel deems proper.

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

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. Each party shall pay its own attorneys' fees.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **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	= \$ 500.00
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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, Merrill, Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member Surcharge	= \$ 2,800.00
Pre-hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00

#### **Forum Fees and Assessments**

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

Two (2) Decisions on discovery-related motions on the papers with the arbitrator @ \$200.00	= \$ 400.00
Two (2) Pre-hearing sessions with the Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: July 7, 2005      1 session	
January 30, 2006      1 session	

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Eight (8) Hearing sessions @ \$1,200.00		= \$ 9,600.00
Hearing Date:	March 6, 2006	2 sessions
	March 7, 2006	2 sessions
	March 8, 2006	2 sessions
	March 9, 2006	2 sessions
<b>Total Forum Fees</b>		<b>= \$ 12,400.00</b>

1. The Panel has assessed \$12,400.00 of the forum fees to Claimant.

### Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 12,400.00</u>
Total Fees	= \$ 12,900.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 11,100.00

2. Respondent is solely liable for:

<u>Member Fees</u>	<u>= \$ 8,550.00</u>
Total Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
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.

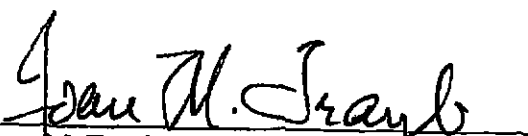
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**ARBITRATION PANEL**

Joan M. Traub, Esq.	-	Public Arbitrator, Presiding Chairperson
Roy W. Romberger	-	Public Arbitrator
Erica Levitt	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**


I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

  
Joan M. Traub, Esq.  
Public Arbitrator, Presiding Chairperson

March 22, 2006  
Signature Date

\_\_\_\_\_  
Roy W. Romberger  
Public Arbitrator

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

  
Erica Levitt  
Non-Public Arbitrator

3/22/06  
Signature Date

**March 28, 2006**

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

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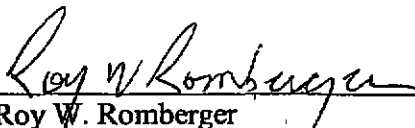
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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Roy W. Romberger  
Public Arbitrator

3/22/06  
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Signature Date

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Erica Levitt  
Non-Public Arbitrator

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

**March 28, 2006**

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Date of Service (For NASD Dispute Resolution use only)