

**Stipulated Award  
NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Names of the Claimants

Maxie A. LeBlanc  
Maxie A. LeBlanc, IRA  
Katherine S. LeBlanc  
LeBlanc Construction

Case Number: 05-02591

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
Robert Ewing, IV  
Randy Kirby

Hearing Site: New Orleans, Louisiana

---

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

**REPRESENTATION OF PARTIES**

For Maxie A. LeBlanc, Maxie A. LeBlanc, IRA, Katherine S. LeBlanc, LeBlanc Construction, hereinafter collectively referred to as "Claimants": Samuel David Abraham, Esq., Lafayette, Louisiana

For Merrill Lynch, Pierce, Fenner & Smith Incorporated ("ML"), Robert Ewing, IV ("Ewing"), and Randy Kirby ("Kirby"), hereinafter collectively referred to as "Respondents": George C. Freeman, III, Esq. and Meredith A. Cunningham, Esq., Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., New Orleans, Louisiana.

**CASE INFORMATION**

Statement of Claim filed on or about: May 15, 2005.

Claimants signed the Uniform Submission Agreement on or about: May 15, 2005.

Answer filed by Respondents on or about: October 25, 2005.

Respondent ML signed the Uniform Submission Agreement on July 19, 2005.

Respondent Kirby signed the Uniform Submission Agreement on August 3, 2005.

Respondent Ewing signed the Uniform Submission Agreement on August 2, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; fraud; unauthorized trading; breach of fiduciary duty; and, failure to supervise.

Respondents denied the claims in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory and actual damages in an amount exceeding \$300,000.00 and well-managed account damages; 2) interest; 3) costs; 4) attorneys' fees; 5) forum fees; and, 6) punitive damages to be determined by the Panel.

Respondents requested: 1) dismissal of the Statement of Claim in its entirety; 2) fees and costs; 3) other relief as is just and proper; and, 4) that all references to this matter be expunged from the NASD Central Registration Depository ("CRD") records of Respondents Ewing and Kirby.

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

Claimants and Respondents entered into a confidential settlement agreement. In connection with that agreement, Claimants dismissed all claims against Respondents with prejudice.

The parties submitted a Joint Motion to enter a Stipulated Award including a request for expungement of the NASD Central Registration Depository ("CRD") record of Respondent Kirby on or about August 28, 2006. On or about September 7, 2006 the Panel issued an order setting a hearing on the Joint Motion to Enter a Stipulated Award.

Therefore, the parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

On or about October 30, 2006, the Panel heard oral argument regarding the expungement of the CRD record of Respondent Kirby.

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

### **AWARD**

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

- (1) The Panel finds that Respondent Kirby was not involved in the alleged investment related sales practice, as represented by counsel for Claimants and Respondents in their signed Joint Motion to Enter a Stipulated Award;
- (2) The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Kirby's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Rule 2130, Respondent Kirby must obtain an order from a court of competent jurisdiction

directing such expungement or confirming an arbitration award containing such relief. 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;

- (3) Claimants' claims are hereby denied and dismissed with prejudice;
- (4) Each party shall bear its own costs and expenses associated with the above-referenced arbitration, including attorneys' fees, except as fees are specifically addressed below;
- (5) Any and all relief not specifically addressed herein is 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	= \$ 300.00
--------------------------	-------------

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is ML.

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

#### **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 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 Panel @ \$1,125.00/session	= \$2,250.00
Pre-hearing conferences: December 20, 2005 1 session	
October 30, 2006 1 session	
<hr/> Total Forum Fees	<hr/> = \$2,250.00

The Panel has assessed \$1,125.00 of the forum fees to Claimants.

The Panel has assessed \$1,125.00 of the forum fees 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.

There were no administrative costs incurred during these proceedings.

### **Fee Summary**

Claimants are liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,125.00
<hr/> Total Fees	<hr/> = \$1,425.00
Less payments	= \$1,425.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 0.00

Respondent ML is solely liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,125.00
<u>Total Fees</u>	= \$1,125.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$1,125.00

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

**ARBITRATION PANEL**

Charles Reasonover, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald M. Helton.	-	Public Arbitrator
William R. Hanlein	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Charles Reasonover, Esq.  
Public Arbitrator, Presiding Chairperson

November 1, 2006  
Signature Date

/s/  
Donald M. Helton  
Public Arbitrator

October 31, 2006  
Signature Date

/s/  
William R. Hanlein  
Industry Arbitrator

November 1, 2006  
Signature Date

November 1, 2006  
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution  
Arbitration No. 05-02591  
Stipulated Award Page 5

Respondent ML is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

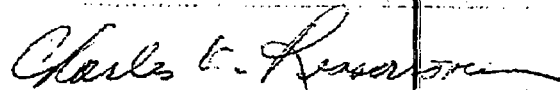
Forum Fees	= \$1,125.00
Total Fees	= \$1,125.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,125.00

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

**ARBITRATION PANEL**

Charles Reasonover, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald M. Helton.	-	Public Arbitrator
William R. Hanlein	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**



Charles Reasonover, Esq.  
Public Arbitrator, Presiding Chairperson

11/1/06

Signature Date

Donald M. Helton  
Public Arbitrator

Signature Date

William R. Hanlein  
Industry Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

Oct. 31. 2006 4:57PM

**NASD Dispute Resolution**  
**Arbitration No. 05-02591**  
**Stipulated Award Page 5**

Respondent ML is solely liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$1,125.00
<u>Total Fees</u>	= \$1,125.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$1,125.00

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


**ARBITRATION PANEL**

Charles Reasonover, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald M. Helton,	-	Public Arbitrator
William R. Hanlein	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Charles Reasonover, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Donald M. Helton  
Public Arbitrator

10-31-06  
Signature Date

\_\_\_\_\_  
William R. Hanlein  
Industry Arbitrator

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

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

011.31. 2006 5:14PM

No. 3334 P. 6 6

NASD Dispute Resolution  
 Arbitration No. 05-02591  
 Stipulated Award Page 5

Respondent ML is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$1,125.00
Total Fees	= \$1,125.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,125.00

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

### ARBITRATION PANEL

Charles Reasonover, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald M. Helton.	-	Public Arbitrator
William R. Hanlein	-	Industry Arbitrator

### Concurring Arbitrators' Signatures

\_\_\_\_\_  
 Charles Reasonover, Esq.  
 Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
 Donald M. Helton  
 Public Arbitrator

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

William R. Hanlein  
 William R. Hanlein  
 Industry Arbitrator

11/1/06  
 Signature Date

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