

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Dr. Subhas C. Mullick (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc. and  
Edmund F. DiLeone (Respondents)

Case Number: 05-03557

Hearing Site: Boston, Massachusetts

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

**REPRESENTATION OF PARTIES**

Claimant Dr. Subhas C. Mullick ("Mullick"), hereinafter referred to as "Claimant":  
Nicholas P. Iavarone, Esq., SimmonsCooper LLC, East Alton, IL.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., ("Merrill Lynch") and Edmund  
F. DiLeone ("DiLeone"), hereinafter collectively referred to as "Respondents": Lawrence  
D. Ross, Esq., Bressler, Amery & Ross, P.C., Morristown, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: July 11, 2005.

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

Joint Statement of Answer filed by Respondents on or about: October 10, 2005.

Respondent Merrill Lynch signed the Uniform Submission Agreement: August 9, 2005.

Respondent DiLeone signed the Uniform Submission Agreement: September 21, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, breach of contract, violation of the Securities Exchange Act, violation of the Massachusetts Uniform Securities Act, violation of the Massachusetts Regulation of Business Practices for consumer Protection, and negligence. The causes of action relate to unspecified securities.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of at least \$285,000.00, plus interest, punitive damages in the amount of at least \$855,000.00, costs, reasonable attorneys' fees, pre-judgment interest of 6% pursuant to the Massachusetts Uniform Securities Act, and whatever additional relief the Arbitration Panel believes just and within their authority.

Respondents requested dismissal of the Statement of Claim with prejudice, expungement of DiLeone CRD records, and other further relief as the Panel may deem just and proper.

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

On or about April 20, 2006, the parties informed NASD Dispute Resolution that this case was settled and on or about May 2, 2006, Respondents submitted their Motion to Re-Open the case for the purpose of submitting a Stipulated Award.

On or about June 29, 2006, the Panel granted the Motion to Re-Open to submit the Stipulated Award. The parties submitted the Stipulated Award on July 13, 2006.

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**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimant's claims are dismissed in their entirety with prejudice.
2. Claimant and Respondent Merrill Lynch have entered into a confidential settlement agreement, which shall be complied with by the parties.
3. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Edmund F. DiLeone's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Edmund F. DiLeone 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 the following affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation.

4. Any and all relief not specifically addressed herein 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 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 Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: November 7, 2005 1 session	
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	= \$1,200.00

1. The Panel has assessed \$600.00 of the forum fees to Claimant.
2. The Panel has assessed \$600.00 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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

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|---|------------|
| 1. Respondents' - retrieval of file from archives | = \$ 25.00 |
|---|------------|

**FEE SUMMARY**

1. 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

*Pursuant to Rule 10332(f) of the Code of Arbitration Procedure, NASD is retaining the total amount of the hearing session deposited by the Claimants because this office was notified by the parties that they settled within eight business days of the first scheduled hearing session.*

2. Respondent Merrill Lynch 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

3. Respondents are jointly and severally liable for:

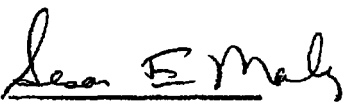
Forum Fees	= \$	600.00
Administrative Costs	= \$	25.00
Total Fees	= \$	625.00
Less payments	= \$	600.00
Balance Due NASD Dispute Resolution	= \$	25.00

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

**ARBITRATION PANEL**

Susan E. Maloney Esq.	-	Public Arbitrator, Presiding Chairperson
Andrea J. Goldman, Esq.	-	Public Arbitrator
Mark J. Gianno, CPA	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Susan E. Maloney, Esq.  
Public Arbitrator, Presiding Chairperson

8/21/06  
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Signature Date

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Andrea J. Goldman, Esq.  
Public Arbitrator

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

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Mark J. Gianno, CPA  
Non-Public Arbitrator

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

September 15, 2006  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Andrea J. Goldman, Esq.	-	Public Arbitrator
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**Concurring Arbitrators' Signatures**

Susan E. Malone, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Andrea J. Goldman  
Andrea J. Goldman, Esq.  
Public Arbitrator

9/17/06  
Signature Date

Mark J. Gianno, CPA  
Non-Public Arbitrator

Signature Date

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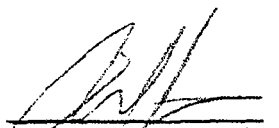
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