

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Richard M. Techtmann and Monica D. Techtmann (Claimants) v. Merrill Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Michael Payne (Respondents)

Case Number: 05-04870

Hearing Site: Philadelphia, Pennsylvania

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Nature of the Dispute: Customers v. Member, Non-Member, and Associated Person.

**REPRESENTATION OF PARTIES**

Claimants Richard M. Techtmann and Monica D. Techtmann hereinafter collectively referred to as "Claimants": Ralph J. Kelly, McShea-Tecce, P.C., (formerly with the firm Abrahams, Lowenstein & Bushman) Philadelphia, PA.

Respondents Merrill Lynch, Pierce Fenner & Smith, Incorporated, ("MLPFS") and Michael Payne ("Payne") hereinafter collectively referred to as "Respondents": William E. Mahoney, Jr., Esq., Stradely Ronon Stevens & Young, LLP, Philadelphia, PA.

Respondent Merrill Lynch & Co., Inc., hereinafter referred to as "Merrill Lynch" did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: September 14, 2005.

Richard M. Techtmann signed the Uniform Submission Agreement: September 15, 2005.

Monica D. Techtmann signed the Uniform Submission Agreement: September 15, 2005.

Joint Statement of Answer and Counterclaim filed by Respondents on or about: January 26, 2006.

MLPFS signed the Uniform Submission Agreement: December 15, 2005.

Payne signed the Uniform Submission Agreement: January 26, 2006.

Merill Lynch did not file a Statement of Answer or Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; violations of the Pennsylvania and New York Consumer Protection Acts; unsuitability; churning; and fraud. Claimants' claims involved unspecified technology stocks and funds

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

In their Counterclaim, Respondents asserted the following cause of action: breach of contract.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$500,000.00, plus interest at an appropriate rate of interest; treble damages, attorneys' fees and costs; alternatively, punitive damages as the panel deems appropriate plus costs and attorneys' fees; reimbursement for all of their costs and expenses, including reasonable attorneys' fees; interest at the rate of at least 6% from the date of the award; and such other relief as the Panel shall deem just and proper.

Respondents requested that a judgment be entered in their favor, and against Claimants in an amount to be determined, together with punitive damages, statutory interest, costs and attorneys' fees according to equity and all applicable law.

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

Respondent Merrill Lynch is not a member of NASD Dispute Resolution and did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement. By Order dated August 10, 2005 of the Court of Common Pleas, Philadelphia County, upon petition of Respondents Merrill Lynch, MLPFS, and Payne, Claimants were ordered to submit their claims to arbitration. Accordingly, Merrill Lynch is bound by the determination of the Panel on all issues submitted.

During the hearing, Payne made a Motion to Expunge.

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. MLPFS and Payne are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount of \$300,000.00.
2. MLPFS and Payne are jointly and severally liable for and shall pay to Claimants \$500.00 to reimburse Claimants for the non-refundable filing fee previously paid to NASD Dispute Resolution.
3. Payne's request for expungement is denied.
4. Respondents' counterclaim is denied in its entirety.
5. 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
Counter claim filing fee	= \$ 500.00

*In accordance with the Award section above, Respondents MLPFS and Payne are jointly and severally liable for and shall pay to Claimants \$500.00 to reimburse them for the non-refundable filing fee previously paid to NASD Dispute Resolution.*

#### **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 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. 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 900.00  
Pre-hearing conferences: September 7, 2006 1 session  
November 6, 2006 1 session

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$1,200.00  
Pre-hearing conference(s): May 11, 2006 1 session

Six (6) Hearing sessions @ \$1,200.00 = \$ 7,200.00  
Hearing Dates: November 14, 2006 2 sessions  
November 15, 2006 2 sessions  
November 16, 2006 2 sessions

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Total Forum Fees = \$9,300.00

The Panel has assessed \$9,300.00 of the forum fees jointly and severally against MLPFS and Payne.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$1,700.00
Refund Due Claimants	= \$1,200.00

2. Respondent Merrill Lynch, Pierce, Fenner & Smith 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

4. Respondents MLPFS and Payne are jointly and severally liable for:

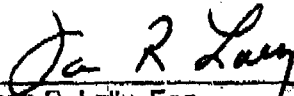
Counterclaim Filing Fee	= \$ 500.00
Forum Fees	= \$9,300.00
Total Fees	= \$9,800.00
Less Payments	= \$3,750.00
Balance Due NASD Dispute Resolution	= \$6,050.00

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

**ARBITRATION PANEL**

Joseph R. Lally, Esq.	-	Public Arbitrator, Presiding Chair
Kathleen R. Murphy, Esq.	-	Public Arbitrator
Felix A. Meschini, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Joseph R. Lally, Esq.  
Public Arbitrator, Presiding Chairperson

11/22/06  
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Signature Date

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Kathleen R. Murphy, Esq.  
Public Arbitrator

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Signature Date

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Felix A. Meschini, Jr.  
Non-Public Arbitrator

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Signature Date

November 24, 2006

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Date of Service (For NASD Dispute Resolution use only)

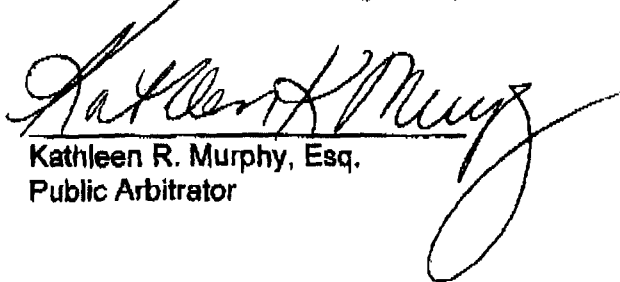
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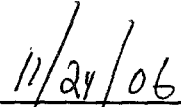
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