

**Stipulated Award**  
**NASD Dispute Resolution, Inc.**

---

In the Matter of the Arbitration Between

Name of Claimant

James Seramba

Case No. 99-05159

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
John L. Dozier

---

**REPRESENTATION OF PARTIES**

For James Seramba, hereinafter referred to as "Claimant": Joel E. Davidson, Esq., Law Offices of Joel E. Davidson, Esq., Park Ridge, New Jersey.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and John L. Dozier ("Dozier"), hereinafter collectively referred to as "Respondents": Christopher C. Coss, Esq., Rubin & Associates, P.C., Paolia, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on or about: November 16, 1999.

Claimant signed the Uniform Submission Agreement on: November 5, 1999.

Amended Statement of Claim filed on or about: November 26, 1999.

Statement of Answer and Counterclaim filed by Respondent MLPFS on or about: March 17, 2000.

Statement of Answer filed by Respondent Dozier on or about: March 17, 2000.

Respondents signed the Uniform Submission Agreement on: May 2, 2000.

Reply to Counterclaim filed by Claimant on or about: April 10, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) defamation; 2) conversion; and 3) violation of state labor laws. The causes of action relate to Respondent MLPFS' filing of an improper, defamatory Form U-5 relating to Claimant and the conversion of commission compensation owed to Claimant.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Claimant is barred from recovery by a settlement agreement and release executed by Claimant; 2) Claimant is barred from recovery by the waiver and release contained within the Form U-4 he signed upon

commencement of employment with Respondent MLPFS; 3) Claimant is barred from recovery by the doctrines of waiver and estoppel; 4) Claimant failed to state a claim against Respondent Dozier upon which relief may be granted; 5) Claimant's damages, if any, must be reduced by the amount of his interim earnings; 6) Respondents did not act with malice; 6) Claimant is not entitled to punitive damages; 7) the alleged defamatory statements are true; 8) the alleged defamatory statements are protected by an absolute and/or qualified privilege(s); and 9) Respondents were justified in making the alleged defamatory statements.

Respondent MLPFS asserted the following causes of action in its counterclaim: 1) malicious prosecution; and 2) wrongful joinder. The causes of action relate to the claims asserted by Claimant in this arbitration proceeding.

Unless specifically admitted in his reply to the counterclaim, Claimant denied the allegations made in the counterclaim and asserted the following defenses: 1) Respondent MLPFS failed to comply with all conditions precedent to filing its counterclaim; and 2) Respondent MLPFS failed to state a claim upon which relief may be granted.

#### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages of approximately \$7,171.93 for unpaid commissions; 2) punitive damages of not less than \$71,719.30 for conversion; 3) compensatory and punitive damages of not less than \$25,000.00 for invasion of privacy; 4) additional punitive damages of not less than \$750,000.00; 5) expungement of the matters reported by Respondent MLPFS as to Claimant; 6) reimbursement of costs, filing fees and attorneys' fees incurred by Claimant in connection with Respondent MLPFS' filing a false Amended Form U-5; 7) costs; and 8) dismissal of the counterclaim.

Respondent MLPFS requested: 1) unspecified compensatory damages; 2) costs; 3) attorneys' fees; and 4) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested dismissal of the Statement of Claim.

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

On or about November 26, 1999, Respondents filed their motion to dismiss wherein the Respondents requested the Panel to dismiss the claims asserted against Respondents. On August 23, 2000, the Panel dismissed, without prejudice, the claims asserted against Respondent Dozier and denied all other relief requested by Respondents.

On or about November 9, 2000, Claimant informed NASD Dispute Resolution, Inc. that the parties had entered into settlement. Thereafter, the parties moved the Panel for the entry of an award.

The parties have 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**

After considering the pleadings and the settlement between the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Amended Form U-5 dated August 2, 1999 filed by Respondent MLPFS with respect to Claimant Seramba shall be expunged from the NASD Central Registration Depository ("CRD") and deleted from the CRD upon its receipt of this Stipulated Award.
2. Claimant's and Respondent MLPFS's withdrawal of their respective claims and counterclaims is accepted with prejudice.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$375.00
Counterclaim 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 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 a party.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

*There were no adjournments requested during these proceedings.*

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

The Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$1,200.00	= \$2,400.00
Pre-hearing conferences: July 20, 2000      1 session	

1 session

**= \$2,400.00**

Pursuant to the agreement of the parties, the Panel has assessed \$1,200.00 of the forum fees to Claimant and \$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 including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

### **Fee Summary**

**Claimant be and hereby is solely liable for:**

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$1,200.00
Total Fees	= \$1,575.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

**Respondent MLPFS be and hereby is solely liable for:**

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$6,100.00
Total Fees	= \$6,600.00
<u>Less payments</u>	<u>= \$6,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

**Respondents be and hereby are jointly and severally liable for:**

Forum Fees	= \$1,200.00
Total Fees	= \$1,200.00
<u>Less payments</u>	<u>= \$1,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$200.00

**All balances are payable to NASD Dispute Resolution, Inc. and due immediately upon receipt of the Stipulated Award by the parties.**

### **Concurring Arbitrators' Signatures**

/s/  
Wayne Parker  
Public Arbitrator, Presiding Chair

Signature Date

/s/  
Daniel Desmond, VP  
Industry Arbitrator

Signature Date

/s/  
Robert P. Porter  
Public Arbitrator

Signature Date

May 22, 2001  
Date of Service (For NASD-DR office use only)

August 14, 2000 1 session

Total Forum Fees = \$2,400.00

Pursuant to the agreement of the parties, the Panel has assessed \$1,200.00 of the forum fees to Claimant and \$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 including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 375.00	
Forum Fees	= \$1,200.00	
Total Fees	= \$1,575.00	
<u>Less payments</u>	<u>= \$1,575.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$0.00

Respondent MLPFS be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00	
Member Fees	= \$6,100.00	
Total Fees	= \$6,600.00	
<u>Less payments</u>	<u>= \$6,600.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$0.00

Respondents be and hereby are jointly and severally liable for:

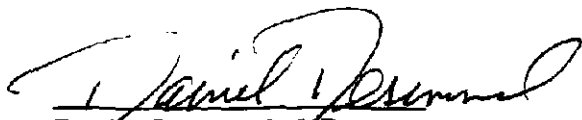
Forum Fees	= \$1,200.00	
Total Fees	= \$1,200.00	
<u>Less payments</u>	<u>= \$1,000.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$200.00

All balances are payable to NASD Dispute Resolution, Inc. and due immediately upon receipt of the Stipulated Award by the parties.

**Concurring Arbitrators' Signatures**

Wayne Parker  
Wayne Parker  
Public Arbitrator, Presiding Chair

5/18/01  
Signature Date



Daniel Desmond, VP  
Industry Arbitrator

5/11/01  
Signature Date

---

Robert P. Porter  
Public Arbitrator

---

Signature Date

---

Date of Service (For NASD-DR office use only)

Award Page 5

**Daniel Desmond, VP**

## Industry Arbitrator

W. B. E. D.

## Robert P. Porter

## Public Arbitrator

**Signature Date**

21 May 2001

**Signature Date**

**Date of Service (For NASD-DR office use only)**