**In the Matter of the Arbitration Between:**

**Amended Award
  
NASD Dispute Resolution**

**Name of the Claimant Case Number: 04-03102**

**William H. Durham, M.D.**

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| **Names of the Respondents**  **Merrill Lynch Pierce, Fenner & Smith, Inc. Henry Blodget**  **Justin Baldauf**  **Kirsten Campbell**  **Virginia Syer Genereux**  **Sofia Ghachem**  **Edward McCabe**  **Deepak Raj**  **Phua K. Young**  **Fund Asset Management, L.P.** | **Hearing Site: New Orleans, Louisiana** |

**Nature of the Dispute: Customer vs. Member, Non-Member and Associated Person.**

**REPRESENTATION OF PARTIES**

**For William H. Durham, M.D., hereinafter referred to as "Claimant": John G. Corlew, Esq., Watkins & Eager, Jackson, Mississippi and Kirk Reasonover, Esq., Reasonover Law Firm, LLC, New Orleans, Louisiana.**

**For Merrill Lynch Pierce, Fenner & Smith, Inc., Inc. ("ML"): Peter S. Fruin, Esq. and Bradley B. Rounsaville, Esq., Maynard, Cooper & Gale, P.C. Birmingham, Alabama.**

**For Henry Blodget ("Blodget"}: Joseph D. Edmondson, Jr., Esq., Foley & Lardner, LLP, Washington, DC.**

**For Justin Baldauf ("Baldauf"), Kirsten Campbell ("Campbell"), Virginia Syer Genereux ("Genereux") and Edward McCabe ("McCabe'): Ellen V. Endrizzi, Esq., Sidley Austin Brown & Wood, LLP, New York, New York.**

**Sofia Ghachem ("Ghachem") appeared pro se.**

**For Deepak Raj ("Raj"): Betty Santangelo, Esq., Shulte, Roth & Zabel, LLP, New York, New York.**

**For Phua K. Young ("Young"): Vicki F. Andreadis, Esq., Hughes Hubbard & Reed, LLP, New York, New York.**

**Fund Asset Management, L.P. did not submit to arbitration.**

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**CASE INFORMATION**

**Statement of Claim filed on or about: April 27, 2004.**

**Amended Statement of Claim filed on or about: May 3, 2004.**

**Claimant signed the Uniform Submission Agreement: March 13, 2004.**

**Statement of Answer to the Amended Statement of Claim filed by Respondent ML on or about: August 12, 2004.**

**Statement of Answer to the Amended Statement of Claim filed by Respondent Blodget on or about: August 13, 2004.**

**Statement of Answer the Amended Statement of Claim filed by Respondent Young on or about: September 14, 2004.**

**Respondent ML did not sign the Uniform Submission Agreement.**

**Respondent Blodget signed the Uniform Submission Agreement: July 28, 2004. Respondent Baldauf did not sign the Uniform Submission Agreement.**

**Respondent Campbell signed the Uniform Submission Agreement: August 20, 2004. Respondent Genereux signed the Uniform Submission Agreement: August 10, 2004. Respondent Ghachem did not sign the Uniform Submission Agreement.**

**Respondent McCabe did not sign the Uniform Submission Agreement.**

**Respondent Raj signed the Uniform Submission Agreement: August 28, 2004. Respondent Young signed the Uniform Submission Agreement: July 9, 2004. Motion to Dismiss and Answer filed by Respondents Campbell and Genereux on or about: August 27, 2004.**

**Motion to Dismiss filed by Respondent Young on or about: February 8, 2005. Motion to Dismiss Statement of Claim filed by Respondent Blodget on or about: February 8, 2005.**

**Memorandum Brief in Opposition to Motions to Dismiss of Respondents Blodget and Young filed by Claimant on or about: March 11, 2005.**

**Respondents Baldauf, Ghachem, McCabe and Raj did not file Statements of Answer.**

**CASE SUMMARY**

**Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) violation of State "Blue Sky" Laws; 3) unjust enrichment; 4) negligent misrepresentation; 5) fraud and intentional misrepresentation; and, 6) negligence. The causes of action relate to Claimant's investments in, including but not limited to, Merrill Lynch's Focus 20 Fund, Internet Capital stock and Tyco stock.**

**Unless specifically admitted in their Answers, Respondents ML, Blodget, Campbell, Genereaux and Young denied the allegations made in the Statement of Claim, as amended, and asserted various affirmative defenses.**

**RELIEF REQUESTED**

**Claimant requested: 1) compensatory damages in the amount of $1,000,000.00; 2) loss of benefits; 3) pre and post judgment interest; 4) unspecified damages associated with the distribution from his retirement account; 5) disgorgement; 6) attorneys' fees; 7) costs; and 8) punitive damages in the amount of $3,000,000.00.**

**Respondent ML requested: 1) that all claims be denied; 2) costs; and, 3) such other**

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**relief as deemed just.**

**Respondent Blodget requested: 1) that all claims be dismissed with prejudice; 2) attorneys' fees; 3) costs; and, 4) expungement of all references to the Statement of Claim from his NASD Central Registration Depository ("CRD") record.**

**Respondent Young requested: 1) that all claims be dismissed; 2) expungement of all references to this matter from his CRD record; 3) costs and expenses; 4) attorneys' fees; and, 5) for such other relief as deemed just.**

**Respondents Campbell and Genereux requested: 1) that the Amended Statement of Claim be dismissed with prejudice; 2) costs; and 3) attorneys' fees.**

**OTHER ISSUES CONSIDERED AND DECIDED**

**Respondents Baldauf, Ghachem and McCabe did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("the Code"), and are bound by the determination of the Panel on all issues submitted.**

**Respondents ML did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified, is bound by the determination of the Panel on all issues submitted.**

**Claimant asserted claims against non-member Fund Asset Management, Inc. whose submission to the jurisdiction of NASD Dispute Resolution was voluntary. The non­member declined to voluntarily submit to the jurisdiction of NASD Dispute Resolution. Therefore, the Panel made no determination with respect to Fund Asset Management.**

**On or about December 8, 2004, Claimant dismissed his claim, with prejudice, against the following Respondents: Raj, Campbell, Genereux, Baldauf and McCabe.**

**On or about December 28, 2004, Claimant dismissed his claim against Respondent Ghachem, without prejudice.**

**On or about April 8, 2005, the Panel issued an order denying the Motions to Dismiss submitted by Respondents Blodget and Young.**

**During the evidentiary hearing and at the close of Claimant's case, Respondents ML, Blodget and Young made an ore tenus Motion to Dismiss the claim. The Panel granted Respondents' Motion to Dismiss Claimant's claim with prejudice.**

**During the evidentiary hearing, Respondent Raj reasserted his request for expungement of this matter from his CRD records in a motion dated May 20, 2007.**

**During the evidentiary hearing, Respondent Young reasserted his request for expungement of this matter from his CRD records in a letter dated May 23, 2007.**