

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Roal Global Corporation

Case Number: 00-04163

Name of the Respondent  
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Dallas, Texas.

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**REPRESENTATION OF PARTIES**

Claimant Roal Global Corporation, hereinafter referred to as "Claimant": Anthony A. Petrocchi, Esq., of Weil & Petrocchi, P.C., located in Dallas, Texas.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Wayne Secore, Esq. and Randall M. Foret, Esq., of the firm of Secore & Waller, LLP, located in Dallas, Texas.

**CASE INFORMATION**

Statement of Claim filed: September 21, 2000.

Claimant signed the Uniform Submission Agreement: September 8, 2000.

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

Respondent signed the Uniform Submission Agreement: November 16, 2000.

Respondent's Motion to Dismiss filed on: August 23, 2002.

Claimant's Response to Motion to Dismiss and Motion to Amend filed on: November 15, 2002.

Claimant's First Amended Statement of Claim filed on: November 15, 2002.

Respondent's Brief in Reply Claimant's Response to Motion to Dismiss and Motion to Amend filed on: November 22, 2002.

Respondent's Amended Statement of Answer filed on: December 23, 2002.

**CASE SUMMARY**

Claimant asserted the following causes of action: unlawful interference with business relations; misrepresentation; unauthorized trading; failure to disclose; fraud; fraudulent inducement; violation of the Texas Deceptive Trade Practices Act ("DTPA"); breach of fiduciary duty; breach of contract; errors in charges; and, with respect to executions, failure to execute and limit vs. market orders. The causes of action resulted from trading of common stock and a treasury security.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a claim upon which relief can be granted;
2. Claimant is barred from any recovery because it directed, authorized, consented to, acquiesced in, and ratified all transactions in the account;
3. Claimant made all the investment decisions in regard to this account and any losses which may have been suffered by Claimant were caused by the investment decisions made by Claimant and due to market conditions outside the control of Respondent; and,
4. Respondent is not liable to Claimant in any amount because at all times relevant herein, Respondent acted properly and in good faith with regard to Claimant's accounts.

#### **RELIEF REQUESTED**

Claimant requested in the initial claim:

Compensatory Damages	\$9,000,000.00
Punitive Damages	\$1,000,000.00
Attorneys' Fees	Unspecified.
Other Monetary/Non-Monetary Relief if any, as the panel determined.	

In the First Amended Statement of Claim, the Claimant added requests for:

Treble Damages	Pursuant to the DTPA.
Interest	At the highest legal rate.
Attorneys' Fees	Pursuant to the DTPA.

At hearing, Claimant asserted damages of over \$30,000.00 for the contractual, trading and execution issues. Claimant asserted additional damages of \$20,000,000.00 for violation of the DTPA and unlawful interference with business relations, as well as the claims of fraud.

Respondent requested that Claimant's claims for damages be denied in all respects and that the cost of arbitration, including attorneys' fees, be assessed against Claimant.

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

On November 25, 2002, the panel heard argument on Respondent's Motion to Dismiss and Claimant's Motion to Amend during a telephonic conference. At the pre-hearing, Claimant withdrew its claims of race discrimination against a minority company and of intentional infliction of emotional distress. After considering the pleadings, briefs and arguments, the panel determined that:

1. The Motion to Dismiss was denied; and,

2. The Motion to Amend was granted.

At the hearing, the parties stipulated to attorneys' fees of \$25,000.00 and expenses of \$2,500.00 as representing the reasonable and necessary costs for the purpose of this arbitration. Thereafter during the hearing, Respondent requested an award of its attorneys' fees and costs. Claimant objected to this request.

The parties 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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted by Claimant Roal Global Corporation are dismissed and denied in their entirety;
2. The request for attorney's fees and costs made by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is denied;
3. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein; and,
4. Any and all relief not specifically addressed herein, including punitive and treble 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	= \$ 600.00
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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 and the following member fees are assessed:

Member surcharge	= \$ 3,600.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 5,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

Claimant's adjournment of October 2-4, 2001 for mediation = \$ waived

**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:

Five (5) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 6,000.00
Pre-hearing conferences:	
March 13, 2001	1 session
July 10, 2001	1 session
May 17, 2002	1 session
November 25, 2002	1 session
December 17, 2003	1 session
Six (6) Hearing sessions @ \$1,200.00	= \$ 7,200.00
Hearing Dates:	
February 25, 2003	2 sessions
February 26, 2003	2 sessions
February 27, 2003	2 sessions
<hr/> Total Forum Fees	<hr/> = \$13,200.00

The Panel has assessed \$6,600.00 of the forum fees to Claimant Roal Global Corporation and \$6,600.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

**FEE SUMMARY**

Claimant Roal Global Corporation is solely liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 6,600.00</u>
Total Fees	= \$ 7,200.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,400.00

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for:

Member Fees	= \$ 9,200.00
<u>Forum Fees</u>	<u>= \$ 6,600.00</u>
Total Fees	= \$15,800.00
<u>Less payments</u>	<u>= \$ 3,600.00</u>
Balance Due NASD Dispute Resolution	= \$12,200.00

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

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**ARBITRATION PANEL**

Joann Peters, Esq. - Public Arbitrator, Presiding Chairperson  
Robert D. Garrett, Esq. - Public Arbitrator  
William M. Lamoreaux - Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Joann Peters, Esq.  
Public Arbitrator, Presiding Chairperson

5-27-03  
Signature Date

Robert D. Garrett, Esq.  
Public Arbitrator

Signature Date

William M. Lamoreaux  
Public Arbitrator

Signature Date

5/27/03   
Date of Service (For NASD Dispute Resolution office use only)

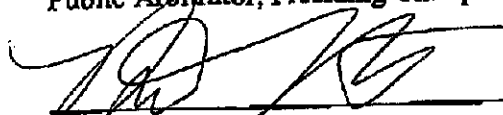
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William M. Lamoreaux  
Public Arbitrator

5/27/03 WLM

Date of Service (For NASD Dispute Resolution office use only)

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Signature Date

**MAY 19 2003**

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Signature Date

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Signature Date

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Public Arbitrator

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