

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Craig S. Chelius and Lynne Hubert Chelius, Claimants v. Greg Hastings and Merrill Lynch,
Pierce, Fenner & Smith, Inc., Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc., Counter-Claimant v. Craig S. Chelius and Lynne
Hubert Chelius, Counter-Respondents

Case Number: 00-05231

Hearing Site: Seattle, Washington

REPRESENTATION OF PARTIES

For Claimants/Counter-Respondents:

Lawrence R. Cock, Esq.
Cable, Langenbach, Kinerk & Bauer, LLP
Seattle, Washington

For Respondent Greg Hastings and
Respondent/Counter-Claimant
Merrill Lynch, Pierce, Fenner & Smith, Inc.:

Eric D. Lansverk, Esq.
Hillis Clark Martin & Peterson
Seattle, Washington

CASE INFORMATION

Statement of Claim filed: November 27, 2000

Claimant/Counter-Respondent Craig S. Chelius' Uniform Submission Agreement signed:
November 8, 2000

Claimant/Counter-Respondent Lynne Hubert Chelius' Uniform Submission Agreement signed:
November 10, 2000

Joint Statement of Answer filed by Respondent Greg Hastings and Respondent/Counter-Claimant
Merrill Lynch, Pierce, Fenner & Smith, Inc.: January 25, 2001

Counterclaim filed by Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.:
January 25, 2001

Joint Statement of Answer to Counterclaim filed by Claimant/Counter-Respondents Craig S. Chelius and Lynne Hubert Chelius: February 6, 2001

Respondent Greg Hastings' Uniform Submission Agreement signed: January 25, 2001

Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement signed: January 25, 2001

CASE SUMMARY

Claimants/Counter-Respondents alleged breach of contract, breach of fiduciary duty, negligence, suitability, negligent misrepresentation, vicarious and derivative liability, improper margin calls, violation of the Consumer Protection Act, violation of New York Stock Exchange Rule 405 and National Association of Securities Dealers Rule 2310 in the trading of Primus common stock, Internet Strategies proprietary fund, and the transfer of funds from their Foundation Account to their Margin Account.

Respondent Greg Hastings and Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. denied the allegations of wrongdoing set forth in the Claimants/Counter-Respondents' Statement of Claim and asserted several affirmative defenses.

Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. submitted a Counterclaim alleging breach of contract and unjust enrichment.

Claimants/Counter-Respondents denied the allegations set forth in Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Counterclaim and asserted several affirmative defenses.

RELIEF REQUESTED

Claimants/Counter-Respondents requested at least \$871,250.00, of funds transferred from the Foundation Account to the Margin Account, the value of 7,735 Primus shares, \$45,922.00 of funds removed from their accounts, \$100,000.00 for loss of their children's educational bonds, \$755,763.00 for income tax liability, unspecified damages for liquidation and loss of 157,585 shares of Primus in their Margin Account, \$18,700.00 of damages for losses occurred in purchase and sale of Internet Strategies proprietary fund, a declaratory judgment that Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. is not entitled the \$146,251.00 allegedly owing for a margin balance or the \$1,065.00 overdraft from their checking account, \$10,000.00 in treble damages, unspecified prejudgment interest on each of the liquidated damages identified, unspecified punitive damages, reasonable attorney's fees, filing fees, session deposits, and hearing fees.

On November 30, 2000, Claimants/Counter-Respondents submitted a correspondence clarifying their request for relief. Specifically, Claimants/Counter-Respondents stated that they approximate the damages being sought to be between \$5,000,000.00 - \$10,000,000.00.

Respondent Greg Hastings and Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. requested dismissal of the Claimants/Counter-Respondents' Statement of Claim in its entirety and award of costs and attorney's fees.

Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. requested compensatory damages of \$162,509.26 and unspecified interest thereon on its Counterclaim.

Claimants/Counter-Respondents requested dismissal of Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Counterclaim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDINGS

After considering the pleadings, testimony, and arguments presented by the parties, the Panel finds as follows:

- 1) For Claimants/Counter-Respondents on their claims for breach of fiduciary duty, breach of contract, and negligence, but also find that Claimants/Counter-Respondents were negligent;
- 2) For Respondent Greg Hastings and Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. on Claimants/Counter-Respondents claim for violation of Washington's Consumer Protection Act;
- 3) For Claimants/Counter-Respondents on Respondent Greg Hastings' and Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.'s defenses of ratification, estoppel and laches;
- 4) For Respondent Greg Hastings and Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. on their defense that Claimants/Counter-Respondents failed to mitigate damages; and
- 5) For Claimants/Counter-Respondents on Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Counterclaim.

AWARD

After considering the pleadings, testimony, and arguments presented by the parties, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Greg Hastings and Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. are jointly and severally liable to and shall pay Claimants/Counter-Respondents the sum of \$1,541,857.00 in compensatory damages.
- 2) Respondent Greg Hastings and Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. are jointly and severally liable to and shall pay Claimants/Counter-Respondents interest at the rate of 9% per annum on the sum of \$1,541,857.00 from April 24, 2000, until payment of this Award is made in full.
- 3) Respondent Greg Hastings and Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. are jointly and severally liable to and shall pay Claimants/Counter-Respondents the sum of \$11,932.98 in costs.
- 4) Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable to and shall pay to Claimants/Counter-Respondents the sum of \$7,391.00 as a sanction for Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.'s failure to cooperate in the discovery process.
- 5) Respondent Greg Hastings and Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. are jointly and severally liable to and shall pay Claimants/Counter-Respondents interest at the rate of 9% per annum on the sum of \$11,932.98 of costs from the date of issuance of this award until payment of this Award is made in full.
- 6) Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable to and shall pay to Claimants/Counter-Respondents interest at the rate of 9% per annum on the sum of \$7,391.00 of sanctions from the date of issuance of this award until payment of this Award is made in full.
- 7) Respondent Greg Hastings and Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. are jointly and severally liable to and shall pay Claimants/Counter-Respondents the sum of \$600.00 as reimbursement for the filing fees associated with this action.
- 8) Respondent Greg Hastings and Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. and Claimants/Counter-Respondents are responsible for and shall split equally the sum of \$3,701.47 for the travel and lodging costs incurred by Arbitrator John Robbins.
- 9) Claimant/Counter Respondents' request for punitive damages are denied.

- 10) Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Counterclaims are denied in their entirety.
- 11) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 12) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 600.00
Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Counterclaim filing fee	= \$1,000.00

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 3,000.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 5,000.00
Total Member Fees	= \$ 8,600.00

Adjournment Fees

The following adjournment fees are assessed:

April 2-5, 2002, adjournment requested by Respondent Greg Hastings	= WAIVED
November 18-21, 2002 and January 21-23, 2003, adjournment requested by Claimants/Counter-Respondents	= WAIVED

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$ 900.00

Pre-hearing conferences:	September 7, 2001	1 session
	October 24, 2001	1 session

Three (3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 3,600.00

Pre-hearing conferences:	July 13, 2001	1 session
	April 26, 2002	1 session
	February 14, 2003	1 session

Twelve (12) Hearing sessions with the Panel @ \$1,200.00/session = \$14,400.00

Hearings:

February 19, 2003	2 sessions
February 20, 2003	2 sessions
February 21, 2003	1 session
February 24, 2003	2 sessions
February 25, 2003	2 sessions
February 26, 2003	2 sessions
February 27, 2003	1 session

Total Forum Fees = \$ 18,900.00

The Panel assessed entire amount of the forum fees jointly and severally to Respondent Greg Hastings and Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Both Parties requested that Arbitrator John Robbins remain on the panel and agreed to pay equally for his travel expenses to Seattle: = \$ 3,701.47

Claimants/Counter-Respondents requested copies of the audio transcripts of the hearing: = \$ 135.00

Respondent/Counter-Claimant requested copies of the audio transcripts of the hearing: = \$ 135.00

Fee Summary

1. Claimants/Counter-Respondents, Craig S. Chelius and Lynne Hubert Chelius, are charged with the following fees and costs:

Initial Filing Fee	= \$ 600.00
Administrative Costs (Arbitrator Travel Expenses)	= \$ 1,850.74
<u>Administrative Costs (Copies of Audio Transcripts)</u>	<u>= \$ 135.00</u>
Total Fees	= \$ 2,585.74
<u>Less payments</u>	<u>= \$(1,935.00)</u>
Balance Due NASD Dispute Resolution	= \$ 650.74

2. Respondent/Counter-Claimant, Merrill Lynch, Pierce, Fenner & Smith, Inc., is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 8,600.00
<u>Administrative Costs (Copies of Audio Transcripts)</u>	= \$ 135.00
Total Fees	= \$ 9,735.00
<u>Less payments (net previous refunds)</u>	= \$ (9,735.00)
Balance Due NASD Dispute Resolution	= \$ (0.00)

3. Respondent Greg Hastings and Respondent/Counter-Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. are charged jointly and severally with the following fees and costs:

Forum Fees	= \$18,900.00
<u>Administrative Costs (Arbitrator Travel Expenses)</u>	= \$ 1,850.74
Total Fees	= \$20,750.74
<u>Less payments by Merrill Lynch, Pierce, Fenner & Smith, Inc</u>	= \$ (1,125.00)
Balance Due NASD Dispute Resolution	= \$19,625.74

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

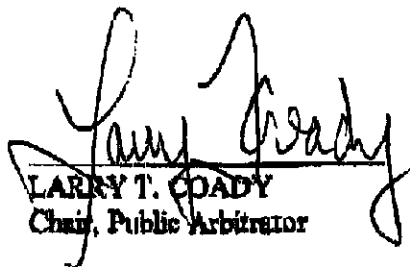
ARBITRATION PANEL

Larry T. Coady
Laurie E. Law, Esq.
John F. Robbins, CFA

-
-
-

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


LARRY T. COADY
Chair, Public Arbitrator

May 30, 2003
Signature Date

LAURIE E. LAW, ESQ.
Public Arbitrator

Signature Date

JOHN F. ROBBINS, CFA
Non-Public Arbitrator

Signature Date

5/30/03
Date of Service

ARBITRATION PANEL

<i>Larry T. Coady</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Laurie E. Law, Esq.</i>	-	<i>Public Arbitrator</i>
<i>John F. Robbins, CFA</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

LARRY T. COADY
Chair, Public Arbitrator

Signature Date

LAURIE E. LAW, ESQ.
Public Arbitrator

Signature Date



JOHN F. ROBBINS, CFA
Non-Public Arbitrator

5.29.03

Signature Date

5/30/03

Date of Service

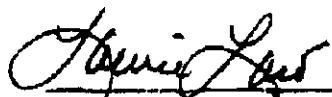
ARBITRATION PANEL

Larry T. Coady	-	Public Arbitrator, Presiding Chair
Laurie E. Law, Esq.	-	Public Arbitrator
John F. Robbins, CFA	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

LARRY T. COADY
Chair, Public Arbitrator

Signature Date


LAURIE E. LAW, ESQ.
Public Arbitrator

6/3/03
Signature Date

JOHN F. ROBBINS, CFA
Non-Public Arbitrator

Signature Date

Date of Service