

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Dr. Habib Monas, (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kuosen Fung, (Respondents)

Case Number: 01-00375

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Dr. Habib Monas, hereinafter referred to as "Claimant": Pinchus Raice, Esq., Raice Paykin Krieg & Schrader LLP, New York, NY.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Kuosen Fung ("Fung"), hereinafter referred to as "Respondents": Roger J. Hawke, Esq., Sidley Austin Brown & Wood LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 23, 2001.

Amended Statement of Claim filed on or about: March 14, 2002.

Claimant signed the Uniform Submission Agreement: January 25, 2001.

Joint Statement of Answer filed by Respondents on or about: May 15, 2001.

Joint Statement of Answer to Amended Statement of Claim filed by Respondents on or about: August 16, 2002.

Merrill signed the Uniform Submission Agreement: May 15, 2001.

Fung signed the Uniform Submission Agreement: May 11, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; professional and ordinary negligence; failure to supervise; failure to follow suitability rules; violation of margin rules; violation of account agreements; exceeding authority; market manipulation; conflict of interest; and illegal tie-in arrangements. Claimant's claim involved an investment in Internet Infrastructure Holders, which consisted of the following stocks: Vitria Technology, Alteon Websystems, Inc., E.piphany Inc., Software.com, Inc., Inktomi Corporation, Realnetworks, Inc., Internap Network Services Corp., and Network Solutions, Inc.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted the following defenses: Claimant fails to disclose what advice he was actually given and fails to indicate what NASD rules or Merrill compliance procedures were supposedly violated; Claimant was a wealthy investor who fully understood and accepted the risks of the trading he himself initiated; Merrill repeatedly advised Claimant to reduce the margin debt and hedge the risk in his account, and it was Claimant who rejected that advice; Claimant received a prospectus for his investment in Internet Infrastructure Holders, which fully disclosed the risks involved in investing in internet stocks; and Claimant has no legitimate basis for now shifting his trading losses to Merrill and to the broker whose sole objective was to carry out his investment objectives in a prudent manner.

RELIEF REQUESTED

Claimant requested:

- a. Compensatory damages in the amount of \$5,400,000.00, representing the maximum value of Claimant's accounts prior to the losses resulting from Respondents' improper investment advice;
- b. Repayment of all interest charged to Claimant;
- c. Repayment of all money paid by Claimant in margin calls;
- d. Punitive damages in the amount of \$5,000,000.00;
- e. Interest on all amounts from December 31, 1999 to the present; and
- f. Such other and further relief as the Panel feels is just and appropriate.

Respondents requested that the Statement of Claim be dismissed, and that all appropriate fees and costs, including attorneys' fees, be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearings in this matter, the Panel allowed Claimant to verbally amend the Statement of Claim to include a claim for corporate fraud.

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. Claimant's claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby 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

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. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

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

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: January 28, 2002	1 session

Six (6) Hearing sessions x \$1,200.00 = \$7,200.00

Hearing Dates:	September 18, 2002	2 sessions
	September 19, 2002	2 sessions
	October 31, 2002	2 sessions

Total Forum Fees = \$8,400.00

1. The Panel has assessed \$4,200.00 of the forum fees against Claimant.
2. The Panel has assessed \$4,200.00 of the forum fees against Merrill.

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.

1. Claimant, requested tapes, \$90.00.
2. Respondent, requested tapes, \$90.00.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 4,200.00
<u>Administrative Costs</u>	= \$ 90.00
Total Fees	= \$ 4,890.00
<u>Less payments</u>	= \$ 1,890.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

2. Merrill is solely liable for:

Member Fees	= \$ 9,200.00
Administrative Costs	= \$ 90.00
<u>Forum Fees</u>	= \$ 4,200.00
Total Fees	= \$13,490.00
<u>Less payments</u>	= \$ 9,200.00
Balance Due NASD Dispute Resolution	= \$ 4,290.00

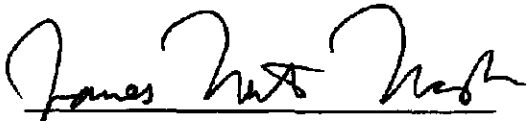
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

James Newton Nash, Esq.	-	Public Arbitrator, Presiding Chair
John A. Scudiero	-	Public Arbitrator
Kenneth Diamond, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



James Newton Nash, Esq.
Public Arbitrator, Presiding Chair

Nov. 15, 2002

Signature Date

John A. Scudiero
Public Arbitrator

Signature Date

Kenneth Diamond, Esq.
Non-Public Arbitrator

Signature Date

December 5, 2002

Date of Service (For NASD Dispute Resolution use only)

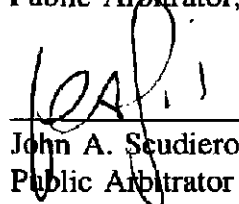
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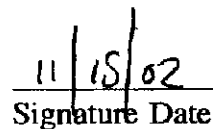
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Public Arbitrator, Presiding Chair


John A. Scudiero
Public Arbitrator

Signature Date


Signature Date

Kenneth Diamond, Esq.
Non-Public Arbitrator

Signature Date

December 5, 2002

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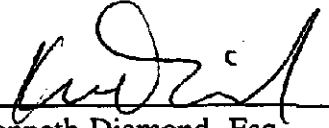
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James Newton Nash, Esq.
Public Arbitrator, Presiding Chair

Signature Date

John A. Scudiero
Public Arbitrator

Signature Date


Kenneth Diamond, Esq.
Non-Public Arbitrator

11/14/02
Signature Date

December 5, 2002

Date of Service (For NASD Dispute Resolution use only)