

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Barbara J. Menard, Denis K. and Dinoo J. Vanier, Andre D. Vanier, Vance K. Vanier, and The V and A Trust, Denis and Dinoo Vanier Trustees, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael J. Maher, Respondents

Case Number: 01-01520

Hearing Site: San Diego, California

REPRESENTATION OF PARTIES

For Claimant Barbara J. Menard:

John H. L'Estrange, Jr., Esq.
Wright & L'Estrange
San Diego, California

For Claimants Denis K. and Dinoo J. Vanier,
Andre D. Vanier, Vance K. Vanier, and
The V and A Trust, Denis and Dinoo Vanier Trustees:

Jeffrey P. Lendrum, Esq.
William E. O'Neill, Esq.
The Lendrum Law Firm
San Diego, California

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc.
and Michael J. Maher:

Rene J. Kern, Jr., Esq.
Kern & Gonzalez
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: March 26, 2001

Claimants' Opposition to Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Michael J. Maher's Motion to Sever filed: August 17, 2001

~~Claimant Barbara J. Menard's Uniform Submission Agreement signed: February 11, 2001~~

Claimants Denis K. and Dinoo J. Vanier's Uniform Submission Agreement signed:
March 1, 2001

Claimant Andre D. Vanier's Uniform Submission Agreement signed: March 1, 2001

Claimant Vance K. Vanier's Uniform Submission Agreement signed: March 1, 2001

Claimant The V and A Trust, Denis and Dinoo Vanier Trustees' Uniform Submission Agreement signed: March 1, 2001

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael J. Maher: June 12, 2001

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement signed: May 30, 2001

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael J. Maher's Motion to Sever filed: June 12, 2001

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael J. Maher's Reply to Claimants' Opposition to Motion to Sever filed: August 21, 2001

Respondent Michael J. Maher's Uniform Submission Agreement filed: June 12, 2001

CASE SUMMARY

Claimants alleged breach of fiduciary duty, constructive fraud, negligent misrepresentation, and negligence. The dispute involved the purchase and/or sale of American Business Products, Inc. and ML-Montclair Capital Fund, LLC.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$800,000.00, punitive damages against Respondents according to their respective net worth, pre-Award interest, tax liabilities incurred by Claimants, attorney's fees, and arbitration costs.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On August 30, 2001, the Director of Arbitration denied Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael J. Maher's Motion to Sever.

During the May 24, 2002 initial telephonic pre-hearing conference, the Arbitration Panel agreed to hear Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael J. Maher's Motion to Sever.

On July 17, 2002, the Arbitration Panel denied Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael J. Maher's Motion to Sever.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael J. Maher are jointly and severally liable to and shall pay Claimant Barbara J. Menard \$240,280.00 in compensatory damages.
- 2) Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable to and shall pay Claimant Barbara J. Menard \$5,000.00 in expert witness fees.
- 3) Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael J. Maher are jointly and severally liable to and shall pay Claimants Denis K. and Dinoo J. Vanier jointly and severally \$134,550.00 in compensatory damages.
- 4) Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael J. Maher are jointly and severally liable to and shall pay Claimant Andre D. Vanier \$48,930.00 in compensatory damages.
- 5) Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael J. Maher are jointly and severally liable to and shall pay Claimant Vance K. Vanier \$48,930.00 in compensatory damages.
- 6) Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael J. Maher are jointly and severally liable to and shall pay Claimants The V and A Trust, Denis and Dinoo Vanier Trustees \$22,890.00 in compensatory damages.

- 7) Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable to and shall pay Claimants Denis K. and Dinoo J. Vanier, Andre D. Vanier, Vance K. Vanier, and The V and A Trust, Denis and Dinoo Vanier Trustees jointly and severally \$10,000.00 in expert witness fees.
- 8) Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable to and shall pay Claimant Barbara J. Menard \$375.00 for reimbursement of filing fee.
- 9) Claimants' request for punitive damages is denied.
- 10) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 11) 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	= \$ 375.00
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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	= \$ 2,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 3,500.00
Total Member Fees	= \$ 6,100.00

Adjournment Fees

The following adjournment fees are assessed:

Hearing Dates, October 21, 2002, - October 28, 2002 adjournment requested by Respondents	= \$ 1,200.00
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Forum Fees and Assessments

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

1 Pre-hearing conference session with the Chair @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: November 6, 2002 1 session	
4 Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 4,800.00
Pre-hearing conferences: May 24, 2002 1 session	
July 15, 2002 1 session	
October 1, 2002 1 session	
January 29, 2003 1 session	
12 Hearing sessions @ \$1,200.00/session	= \$14,400.00
Hearings: February 10, 2002 2 sessions	
February 11, 2003 2 sessions	
February 12, 2003 2 sessions	
February 13, 2003 2 sessions	
February 14, 2003 2 sessions	
February 17, 2003 2 sessions	
Total Forum Fees	= \$19,650.00

The Panel assessed \$19,650.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

1. Claimants Barbara J. Menard, Denis K. and Dinoo J. Vanier, Andre D. Vanier, Vance K. Vanier, and The V and A Trust, Denis and Dinoo Vanier Trustees are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Less payments</u>	<u>= \$(1,575.00)</u>
Refund Due Claimants	= \$(1,200.00)

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

Member Fees	= \$ 6,100.00
<u>Forum Fees</u>	<u>= \$19,650.00</u>
Total Fees	= \$25,750.00
<u>Less payments</u>	<u>= \$(6,700.00)</u>
Balance Due NASD Dispute Resolution	= \$19,050.00

3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael J. Maher are charged jointly and severally with the following fees and costs:

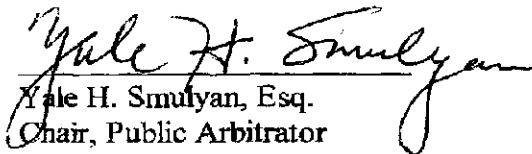
Adjournment Fee	= \$ 1,200.00
<u>Less payment by Merrill Lynch, Pierce, Fenner & Smith, Inc.</u>	<u>= \$(1,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Yale H. Smulyan, Esq.	-	Public Arbitrator, Presiding Chair
Guenter S. Cohn, Esq.	-	Public Arbitrator
Robert Elman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Yale H. Smulyan, Esq.
Chair, Public Arbitrator

03/04/03
Signature Date

Guenter S. Cohn, Esq.
Public Arbitrator

Signature Date

Robert Elman
Non-Public Arbitrator

Signature Date

03/06/03
Date of Service

ARBITRATION PANEL

Yale H. Smulyan, Esq.	-	Public Arbitrator, Presiding Chair
Guenter S. Cohn, Esq.	-	Public Arbitrator
Robert Elman	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Yale H. Smulyan, Esq.
Chair, Public Arbitrator

Signature Date

Guenter S. Cohn, Esq.
Public Arbitrator

Signature Date


Robert Elman
Non-Public Arbitrator

3/4/03
Signature Date

03/06/03
Date of Service