

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Michael Moschillo (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Michael Maglio (Respondents)

Case Number: 01-02014

Hearing Site: New York, NY

REPRESENTATION OF PARTIES

Claimant Michael Moschillo, hereinafter referred to as "Claimant": William D. Sanders, Esq., Alpert Butler Sanders & Norton, P.C., West Orange, NJ.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Michael Maglio ("Maglio"), hereinafter collectively referred to as "Respondents": David Campbell, Esq., Bressler, Amery & Ross P.C., New York, NY. Respondent Maglio originally appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: April 19, 2001.

Claimant, signed the Uniform Submission Agreement: March 20, 2001.

Statement of Answer filed by Respondent Merrill on or about: July 18, 2001.

Amended Statement of Answer and Counterclaim filed by Respondent Merrill on or about April 21, 2003.

Respondent Merrill signed the Uniform Submission Agreement: August 20, 2001.

Statement of Answer filed by Respondent Maglio on or about: July 26, 2001.

Respondent Maglio signed the Uniform Submission Agreement: July 23, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: negligence-margin trading, unsuitability, violation of New Jersey Securities Act, breach of fiduciary duty, violation of securities and exchange act of 1934, equitable and legal fraud, breach of contract, common law gross neglect/willful and wanton negligent supervision/hiring. Claimant's claim involved the following securities: Access Worldwide Comm, CDNOW, Inc., Bluefly, Inc., Infinity Broadcasting (class A), Internet America Inc., Amazon.com, Inc., Twin lab Corp.com, Panther Mtn Water Pk Inc., Cheap Tickets Inc., Yahoo Inc.com, Taseko Minest Ltd NPV BC, America Online Inc., Del, CMGI Inc., Corp.com,

Internet, Gold Gldn Lines, Internet Cap Group Inc, ANTS Software.com, XIN Net Corp, Nokia Corp, and IT Capital Ltd.

Unless specifically admitted in its Answer, Respondent Merrill denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Respondent Merrill asserted the following causes of action: breach of contract and deficiency in account.

Unless specifically admitted in its Answer, Respondent Maglio denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Compensatory Damages in excess of \$100,000.00;
2. Punitive Damages in the amount of \$300,000.00;
3. Interest in the amount of the amount of \$22,500.00;
4. Reasonable attorney's fees, the costs of this proceeding and for such other relief as is just and proper.

Respondent Merrill requested that Claimant's Statement of Claim be dismissed, with prejudice, in its entirety and that the Panel of Arbitrators assess costs against Claimant and other further relief as the Panel of Arbitrators deems just and proper.

In its Counterclaim, Respondent Merrill requested an award in the amount of the deficiency in Claimant's account plus interest at the prevailing margin interest rate through the time of the arbitration hearing in this matter, costs and expenses, and any other relief the panel deems just and proper.

Respondent Maglio requested that Claimant's Statement of Claim be dismissed, with prejudice, in its entirety and that the Panel of Arbitrators assess costs against Claimant and other further relief as the Panel of Arbitrators deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearings in the above-referenced matter, after due deliberation, the panel determined to grant Respondent Merrill's Motion to Amend to add Counterclaim.

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. Respondent Merrill is liable for and shall pay to Claimant the sum of \$25,000.00 as compensatory damages.
2. All claims against Respondent Maglio are dismissed in their entirety.
3. Respondent Merrill's counterclaim is denied in its entirety.
4. Any and all relief not specifically addressed herein including punitive 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	= \$300.00
Counterclaim filing fee	= \$500.00

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. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

September 25-26, and October 1, 2002, adjournment by all parties	= \$ 1,125.00
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The Panel assessed \$562.50 of the adjournment fee against Claimant.

The Panel assessed \$562.50 of the adjournment fee against Respondent Merrill.

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:

One (1) Pre-hearing session with Panel @ \$1,125.00		= \$ 1,125.00
Pre-hearing conference: February 13, 2002	1 session	
Ten (10) Hearing sessions @ \$1,125.00		= \$11,250.00
Hearing Date(s): December 3, 2002	2 sessions	
May 27, 2003	2 sessions	
May 28, 2003	2 sessions	
July 18, 2003	2 sessions	
July 21, 2003	2 sessions	
Total Forum Fees		= \$12,375.00

1. The Panel has assessed \$6,187.50 of the forum fees against Claimant.
2. The Panel has assessed \$6,187.50 of the forum fees against Respondent Merrill.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant assessed photocopying costs = \$20.25
2. Respondent Merrill requested hearing tapes = \$90.00

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
Forum Fees	= \$6,187.50
<u>Administrative Costs</u>	<u>= \$ 20.25</u>
Total Fees	= \$7,070.25
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$5,645.25
2. Respondent Merrill is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 4,600.00
Adjournment Fee	= \$ 562.50

Forum Fees	= \$ 6,187.50
<u>Administrative Costs</u>	= \$ 90.00
Total Fees	= \$11,940.00
<u>Less payments</u>	= \$ 5,162.50
Balance Due NASD Dispute Resolution	= \$ 6,777.50

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

ARBITRATION PANEL

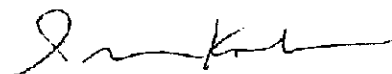
Marc T. Danon, Esq.	-	Public Arbitrator, Presiding Chair
Irwin Kahn, Esq.	-	Public Arbitrator
Donald T. Converse	-	Non-Public Arbitrator

Concurring Arbitrators' Signature(s)

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.

Marc T. Danon, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Irwin Kahn, Esq.
Public Arbitrator

8/26/03

Signature Date

Donald T. Converse
Non-Public Arbitrator

Signature Date

August 27, 2003

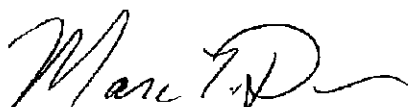
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL


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Irwin Kahn, Esq.	-	Public Arbitrator
Donald T. Converse	-	Non-Public Arbitrator

Concurring Arbitrators' Signature(s)

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Marc T. Danon, Esq.
Public Arbitrator, Presiding Chairperson



Signature Date

Irwin Kahn, Esq.
Public Arbitrator

Signature Date

Donald T. Converse
Non-Public Arbitrator

Signature Date

August 27, 2003

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Concurring Arbitrators' Signature(s)

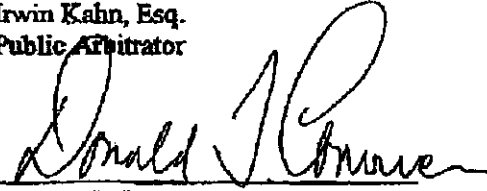
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Marc T. Danon, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Irwin Kahn, Esq.
Public Arbitrator

Signature Date



Donald T. Converse
Non-Public Arbitrator

8-26-03

Signature Date

August 27, 2003
Date of Service (For NASD Dispute Resolution use only)