

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

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In the Matter of the Arbitration Between:

Aleks Horvat and Michel Horvat, Claimants v. Merrill Lynch, Pierce, Fenner & Smith  
Incorporated, Respondent

Case Number: 01-02577

Hearing Site: Los Angeles, California

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**REPRESENTATION OF PARTIES**

For Claimants:

Robert A. Uhl, Esq.  
Aidikoff & Uhl  
Beverly Hills, California

For Respondent:

Thomas L. Taylor, III, Esq.  
Morgan, Lewis & Bockius, LLP  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: May 14, 2001

Claimants Aleks Horvat's and Michel Horvat's Uniform Submission Agreements each signed:  
May 11, 2001

Statement of Answer filed by Respondent: August 10, 2001

Respondent's Uniform Submission Agreement signed: August 8, 2001

**CASE SUMMARY**

Claimants alleged breach of fiduciary duty, breach of contract, unsuitability, unauthorized trading, churning, fraud, constructive fraud pursuant to California Civil Code Sec. 1573, violation of state and federal securities laws, and failure to supervise. Claimants allegations involved securities issued by SDL, Inc., Broadcom Corp., PMC Sierra, Inc., and other unidentified securities, and the use of options, margin and day trading.

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

### **RELIEF REQUESTED**

Claimants requested \$2,899,838.00 in compensatory damages, disgorgement and restitution, unspecified lost opportunity costs, unspecified punitive damages, pre- and post-judgment interest, and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety and costs.

### **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.

### **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) Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is liable to and shall pay Claimant Aleks Horvat the sum of \$1,884,463.00 in compensatory damages.
- 2) Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is liable to and shall pay Claimant Michel Horvat the sum of \$253,156.00 in compensatory damages.
- 3) This Award shall bear interest at the rate of 6% per annum on any balance that remains unpaid thirty (30) days after receipt hereof, unless a motion to vacate has been filed with a court of competent jurisdiction. If this award is the subject of a motion to vacate that is subsequently denied, this award shall bear interest at the rate of 6% per annum on any balance that remains unpaid from date of the court's order denying said motion to vacate.
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) 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	= \$ 500.00
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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 Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$ 2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 4,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 7,600.00</b>

#### **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 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: March 25, 2002	1 session
August 9, 2002	1 session

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: February 1, 2002	1 session

Twenty-three (23) Hearing sessions @ \$1,200.00/session = \$27,600.00

Hearings:	September 9, 2002	2 sessions
	September 10, 2002	2 sessions
	September 11, 2002	2 sessions
	September 12, 2002	2 sessions
	September 13, 2002	2 sessions
	February 3, 2003	2 sessions
	February 4, 2003	2 sessions
	February 5, 2003	2 sessions
	February 7, 2003	2 sessions
	February 10, 2003	2 sessions
	February 12, 2003	2 sessions
	February 14, 2003	1 session

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**Total Forum Fees** = \$29,700.00

The Panel assessed the entire balance of \$29,700.00 of forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated.

#### Fee Summary

1. Claimants Aleks Horvat and Michel Horvat are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Less payments by Aleks Horvat</u>	= \$( 1,700.00)
<b>Refund Due Claimant Aleks Horvat</b>	<b>= \$( 1,200.00)</b>

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

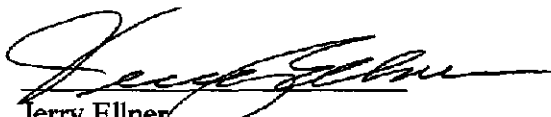
Member Fees	= \$ 7,600.00
<u>Forum Fees</u>	<u>= \$ 29,700.00</u>
Total Fees	= \$ 37,300.00
<u>Less payments</u>	<u>= \$( 7,600.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 29,700.00</b>

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.

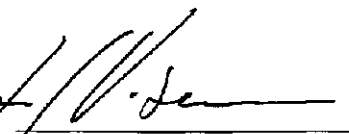
**ARBITRATION PANEL**

<b><i>Jerry Ellner</i></b>	-	<b><i>Public Arbitrator, Presiding Chair</i></b>
<b><i>Leonard M. Vosen, Ph.D.</i></b>	-	<b><i>Public Arbitrator</i></b>
<b><i>Walter W. Klosterman</i></b>	-	<b><i>Non-Public Arbitrator</i></b>

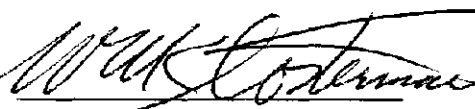
**Concurring Arbitrators' Signatures**

  
Jerry Ellner  
Chair, Public Arbitrator

2/14/03  
Signature Date

  
Leonard M. Vosen, Ph.D.  
Public Arbitrator

2/14/03  
Signature Date

  
Walter W. Klosterman  
Non-Public Arbitrator

2/14/03  
Signature Date

2/14/03  
Date of Service