

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Russell & Giti Malboubi, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and James J. Dyer, Respondents

Case Number: 02-03025

Hearing Site: San Francisco, California

Nature of the Dispute: Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

James Jay Seltzer, Esq.
Michael Harrington, Esq.
Law Offices of James Jay Seltzer
Emeryville, California

For Respondents:

Paul D. Allen, Esq.
Kevin J. Woods, Esq.
Bingham McCutchen LLP
San Francisco, California

CASE INFORMATION

Statement of Claim filed: May 21, 2002

Claimants' Uniform Submission Agreement signed: May 12, 2002

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and James J. Dyer: September 30, 2002

Respondent Merrill Lynch's Uniform Submission Agreement signed: October 1, 2002

Respondent James J. Dyer's Uniform Submission Agreement signed: October 1, 2002

CASE SUMMARY

Claimants made various allegations of wrongdoing based on industry rules and standards in regard to their accounts. Claimants' Claim involved investments in various securities, including but not limited to, investments in Buy.com and Unify Corp.

Respondents denied the substantive allegations in Claimants' Statement of Claim and set forth numerous affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$4,000,000.00 plus interest, costs, attorneys' fees and punitive damages.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, and expungement of all reference to the above-captioned arbitration from Respondent James J. Dyer's registration records maintained by the NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

On April 25, 2005, Claimants Russell & Giti Malboubi and Claimants' Counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On July 28, 2006, Claimants dismissed Respondent James J. Dyer from this matter, voluntarily and with prejudice.

On August 7, 2006, Claimants dismissed with prejudice the above-referenced matter.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

STIPULATED DEMAND AND RECOMMENDATION OF EXPUNGEMENT

The parties hereby stipulate that all claims asserted by Claimants against Respondent James J. Dyer have been dismissed. The parties further stipulate that they will split any outstanding forum fees.

The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent James J. Dyer's registration record maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent James J. Dyer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

AWARD

After considering the preceding Stipulation of the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel notes the parties' stipulation that all claims asserted by the Claimants against Respondent James J. Dyer have been dismissed voluntarily.
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent James J. Dyer's registration record maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondent James J. Dyer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Each party shall bear its own costs, including attorney's fees.
4. Pursuant to the parties' stipulation, all outstanding forum fees shall be split between Claimants and Respondents.
5. All other relief 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
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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 which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

Adjournment Fees

The following adjournment fees are assessed:

The Panel granted Respondents' request to postpone the March 28-31, 2006, hearing dates and assessed the \$1,200.00 postponement fee to Respondents, jointly and severally.

Forum Fees and Assessments

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$1,200.00
Pre-hearing conference: June 3, 2005 1 session

Total Forum Fees = \$1,200.00

1. The Panel assessed \$600.00 of the forum fees jointly and severally to Claimants Russell & Giti Malboubi.
2. The Panel assessed \$600.00 of the forum fees jointly and severally to Respondents Merrill Lynch and James J. Dyer.

Fee Summary

1. Claimants Russell & Giti Malboubi are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 1,200.00
Retained deposit in accordance with Rule 10332(f) of the Code	= \$ 600.00
Less payments	= \$(1,800.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Merrill Lynch is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Less payments	= \$(8,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

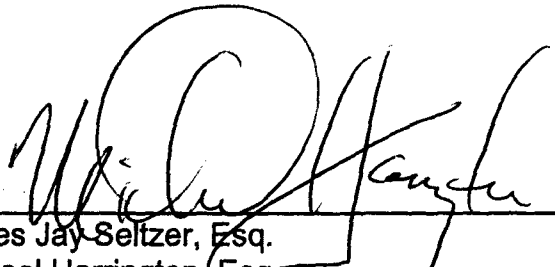
3. Respondents Merrill Lynch and James J. Dyer are charged jointly and severally with the following fees and costs:

Adjournment Fees	= \$ 1,200.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 1,800.00
Less payments	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 1,800.00

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.

Parties' Signatures

Dated: 12/6/06



James Jay Seltzer, Esq.
Michael Harrington, Esq.
Law Offices of James Jay Seltzer
Attorneys for Claimants

Dated: _____

Paul D. Allen, Esq.
Kevin J. Woods, Esq.
Bingham McCutchen LLP
Attorneys for Respondents

3. Respondents Merrill Lynch and James J. Dyer are charged jointly and severally with the following fees and costs:

Adjournment Fees	= \$ 1,200.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 1,800.00
Less payments	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 1,800.00

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.

Parties' Signatures

Dated: _____

James Jay Seltzer, Esq.
Michael Harrington, Esq.
Law Offices of James Jay Seltzer
Attorneys for Claimants

Dated: 12/6/2006

Kevin J. Woods

Paul D. Allen, Esq.
Kevin J. Woods, Esq.
Bingham McCutchen LLP
Attorneys for Respondents

ARBITRATION PANEL

Peter John Wercinski	-	Public Arbitrator, Presiding Chair
Andrew E. Tanenbaum, Esq.	-	Public Arbitrator
Richard B. Bullock	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Peter John Wercinski
Chair, Public Arbitrator

12/18/06

Signature Date

Andrew E. Tanenbaum, Esq.
Public Arbitrator

Signature Date

Richard B. Bullock
Non-Public Arbitrator

Signature Date

1/8/07

Date of Service

ARBITRATION PANEL

Peter John Wercinski	-	Public Arbitrator, Presiding Chair
Andrew E. Tanenbaum, Esq.	-	Public Arbitrator
Richard B. Bullock	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Peter John Wercinski
Chair, Public Arbitrator

Signature Date



Andrew E. Tanenbaum, Esq.
Public Arbitrator

12/20/06

Signature Date

Richard B. Bullock
Non-Public Arbitrator

Signature Date

11/8/07

Date of Service

ARBITRATION PANEL

Peter John Wercinski	-	Public Arbitrator, Presiding Chair
Andrew E. Tanenbaum, Esq.	-	Public Arbitrator
Richard B. Bullock	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Peter John Wercinski
Chair, Public Arbitrator

Signature Date

Andrew E. Tanenbaum, Esq.
Public Arbitrator

Signature Date

Richard B. Bullock
Richard B. Bullock
Non-Public Arbitrator

12/15/06
Signature Date

1/8/07
Date of Service