

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Ann Gray and Thomas Gray (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Bernard Kavanagh (Respondents)

Case Number: 02-05078

Hearing Site: Boston, Massachusetts

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

REPRESENTATION OF PARTIES

Claimants Ann Gray ("A. Gray") and Thomas Gray ("T. Gray") and Ann Gray and Thomas Gray (A & T Gray) hereinafter collectively referred to as "Claimants": Frank J. Liberty, Esq., The Liberty Law Firm, New London, CT. Previously represented by: Frank J. Liberty, Esq., Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, P.C., New London, CT.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Bernard Kavanagh ("Kavanagh") hereinafter collectively referred to as "Respondents": John C. Kelly, Esq., McCarter & English, LLP, Newark, NJ. Previously represented by: Richard Kelly, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 27, 2002.

Amended Statement of Claim filed on or about: October 23, 2002.

Claimants signed the Uniform Submission Agreement: August 23, 2002.

Joint Statement of Answer filed by Respondents on or about: January 27, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: January 27, 2003.

Respondent Kavanagh did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: failure to follow the investment strategy proposed and elimination diversification; unauthorized trading; unsuitable trades; misrepresentation; breach of fiduciary duty; failure to supervise; and violation of the Connecticut Unfair Trade Practices Act, insofar as the representations regarding B2B Holders and Internet Cap Group, Inc. are concerned. The causes of action relate to shares of B2B Internet Holders

Trust, CMGI, Inc.Com, Intel Metrocall, Munder Mutual Funds, Qualcomm, Inc., Intel Corp., and Internet Cap Group, Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$100,000.00; costs; interest; and legal fees.

Respondents requested that the Claim be denied in all respects; costs; and that this matter be expunged from the registration records of Respondent Bernard Kavanaugh.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Kavanaugh did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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, and 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. Claimants' claims are denied in their entirety.
2. Respondents' request for expungement is denied.
3. Any and all relief not specifically addressed herein 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 = \$225.00

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	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 26, 27, 29, 2004, joint adjournment request	= Waived
April 20, 22, 2004, joint adjournment request	= Waived

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with Panel @ \$750.00 = \$1,500.00

Pre-hearing conferences: June 18, 2003 1 session
 November 23, 2004 1 session

Seven (7) Hearing sessions @ \$750.00 = \$5,250.00

Hearing Dates: March 14, 2005 2 sessions
 March 15, 2005 3 sessions
 March 17, 2005 2 sessions

Total Forum Fees = \$6,750.00

1. The Panel has assessed \$3,375.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$3,375.00 of the forum fees against Respondent Merrill Lynch.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$3,375.00
Total Fees	= \$3,600.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$2,625.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$3,550.00
Forum Fees	= \$3,375.00
Total Fees	= \$6,925.00
<u>Less payments</u>	= \$3,550.00

Balance Due NASD Dispute Resolution

= \$3,375.00

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

ARBITRATION PANEL

Harold Rubin	-	Public Arbitrator, Presiding Chairperson
Irene Scharf Esq.	-	Public Arbitrator
John Joseph Cotter, J.D.	-	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.

Harold Rubin
Harold Rubin
Public Arbitrator, Presiding Chairperson

3/29/05
Signature Date

Irene Scharf Esq.
Irene Scharf Esq.
Public Arbitrator

Signature Date

John Joseph Cotter, J.D.
John Joseph Cotter, J.D.
Non-Public Arbitrator

Signature Date

March 28, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

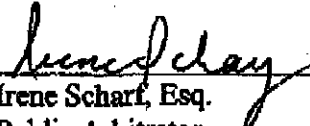
Harold Rubin	-	Public Arbitrator, Presiding Chairperson
Irene Scharf, Esq.	-	Public Arbitrator
John Joseph Cotter, J.D.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Harold Rubin
Public Arbitrator, Presiding Chairperson

Signature Date



Irene Scharf, Esq.
Public Arbitrator

March 24, 2005

Signature Date

John Joseph Cotter, J.D.
Non-Public Arbitrator

Signature Date

March 28, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Harold Rubin	-	Public Arbitrator, Presiding Chairperson
Irme Scharf, Esq.	-	Public Arbitrator
John Joseph Cotter, J.D.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

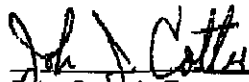
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Harold Rubin
Public Arbitrator, Presiding Chairperson

Signature Date

Irme Scharf, Esq.
Public Arbitrator

Signature Date



John Joseph Cotter, J.D.
Non-Public Arbitrator

March 21, 2005

Signature Date

March 28, 2005

Date of Service (For NASD Dispute Resolution use only)