

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

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In the Matter of the Arbitration Between:

William T. Gaspar (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Paul Ceglarski, Linda Houston, Stanley O'Neal, and David Komansky (Respondents)

Case Number: 02-06525

Hearing Site: Boston, Massachusetts

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

**REPRESENTATION OF PARTIES**

Claimant William T. Gaspar ("Gaspar") hereinafter referred to as "Claimant appeared *pro se*."

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), Paul Ceglarski ("Ceglarski"), Linda Houston ("Houston"), Stanley O'Neal ("O'Neal"), and David Komansky ("Komansky") hereinafter collectively referred to as "Respondents":  
Matthew Fogelman, Esq., Bingham McCutchen, Boston, MA.

**CASE INFORMATION**

Statement of Claim filed on or about: October 29, 2002.

Claimant signed the Uniform Submission Agreement: October 17, 2002.

Response to Motion to Dismiss by O'Neal filed on or about: April 24, 2003.

Joint Statement of Answer filed by MLPFS, Ceglarski, and Houston on or about: March 7, 2003.

Motion to Dismiss of Respondent O'Neal filed on or about: March 7, 2003.

Ceglarski signed the Uniform Submission Agreement: December 26, 2002.

MLPFS did not sign a Uniform Submission Agreement.

Houston did not sign a Uniform Submission Agreement.

Komansky did not file a Statement of Answer or sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: fraud; conflict of interest; negligence; misrepresentation; violations of the Connecticut Uniform Securities Act; failure to perform due diligence; suitability; and breach of fiduciary duty. Claimant's claims involved shares of AOL, LU, MOT, and CMCSK.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$224,000.00, plus interest at the rate of 10% from February 2000; treble damages in the amount of \$672,000.00; damages for pain and suffering; attorneys' fees; and arbitration expenses.

In their Statement of Answer, Respondents MLPFS, Ceglarski, and Houston requested that the Statement of Claim be dismissed with prejudice and that they be awarded costs and attorneys' fees and that the Panel recommend that the records of Respondents Ceglarski and Houston be expunged.

In his Motion to Dismiss, O'Neal requested that the Panel dismiss with prejudice the allegations in the Statement of Claim as to O'Neal.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents MLPFS and Houston did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are 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.

Respondent Komansky 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 is bound by the determination of the Panel on all issues submitted.

Respondents Komansky and O'Neal filed motions to dismiss the arbitration proceedings against them. On or about October 3, 2003, the Panel issued the following Order:

1. The motion to dismiss the Respondent David Komansky for lack of jurisdiction or other procedural grounds is denied;
2. The motion to dismiss the Respondents Stanley O'Neal and David Komansky based upon their alleged relationship to the claims asserted by the Claimant is allowed;
3. Accordingly, the claims against the Respondents Stanley O'Neal and David Komansky are hereby dismissed.

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. MLPFS is solely liable for and shall pay to Claimant the sum of \$57,855.27.
2. Any and all relief not specifically addressed herein, including treble 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	= \$375.00
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#### **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 persons at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

#### **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 @ \$1,200.00	= \$2,400.00
Pre-hearing conferences:	
July 9, 2003	1 session
September 16, 2003	1 session

Six (6) Hearing sessions @ \$1,200.00	= \$7,200.00
Hearing Dates:	
November 12, 2003	2 sessions
November 13, 2003	2 sessions
January 21, 2004	2 sessions

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Total Forum Fee	= \$9,600.00
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1. The Panel has assessed \$4,800.00 of the forum fees against Claimant.
2. The Panel has assessed \$4,800.00 of the forum fees against MLPFS.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 4,800.00
Total Fees	= \$ 5,175.00
<u>Less payments</u>	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

2. MLPFS is solely liable for:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	= \$ 4,800.00
Total Fees	= \$11,800.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00


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

**ARBITRATION PANEL**

Richard J. Grahm, Esq.	-	Public Arbitrator, Presiding Chair
John R. Thompson	-	Public Arbitrator
Michael B. O'Toole	-	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.

  
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Richard J. Grahm, Esq.  
Public Arbitrator, Presiding Chairperson

2/5/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
John R. Thompson  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Michael B. O'Toole  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

February 13, 2004  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

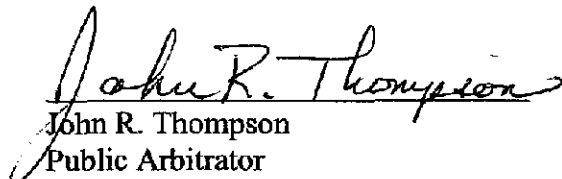
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John R. Thompson  
Public Arbitrator

1-30-04  
Signature Date

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