

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

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In the Matter of the Arbitration Between:

Rafique Pasha and Parveen Pasha (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,  
Alberico Sessa, David Kasell, and Joseph Kasell (Respondents)

Case Number: 02-06867

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants Rafique Pasha ("R. Pasha") and Parveen Pasha ("P. Pasha") hereinafter collectively referred to as "Claimants": Mohammad W. Billah, Esq. and Arkady Frekhtman, Esq., Frekhtman & Associates, Brooklyn, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Alberico Sessa ("Sessa"), David Kasell ("D. Kasell"), and Joseph Kasell ("J. Kasell") hereinafter collectively referred to as "Respondents": Lawrence D. Ross, Esq., Bressler, Amery & Ross, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: November 12, 2002.

Claimant signed the Uniform Submission Agreement: April 13, 2002.

Joint Statement of Answer filed by Respondents on or about: February 12, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: March 21, 2003.

Respondent Sessa signed the Uniform Submission Agreement: March 24, 2003.

Respondent D. Kasell signed the Uniform Submission Agreement: January 23, 2003 and March 23, 2003.

Respondent J. Kasell signed the Uniform Submission Agreement: March 24, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; fraud and misrepresentations; breach of contract; breach of fiduciary duty; violation of NASD and NYSE Rules; and failure to supervise. The causes of action relate to shares of B2B Internet Holdrs Trust, Internet Infrastructure Holdrs, Internet Architect Holdrs Trust, Exodus, CMGI Inc., and Amazon.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$400,000.00; punitive damages in the amount of \$600,000.00; interest; cost; attorneys' fees; and other case-related costs.

Respondents requested dismissal of the Statement of Claim in its entirety, with prejudice, with the costs associated with this proceeding assessed against Claimants; that the Arbitrators enter an order expunging or striking this claim from the permanent registration records of Respondents Sessa, D. Kasell, and J. Kasell maintained by the CRD.

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

The first hearings took place on December 1 and 2, 2004. At the hearings, it became clear that the individual Respondents had not engaged in any wrongdoing in connection with Claimants' accounts. After the end of the second hearing session, Claimants dismissed their claims against the individual Respondents. Thereafter, Claimants settled the remaining claims.

On or about December 28, 2004, the parties submitted a Stipulated Award for the Panel's approval.

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**

On or about December 2, 2004, Claimants and Respondent Merrill Lynch reached a settlement of all of their claims and have agreed to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimants' claims are dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Alberico Sessa's, Joseph Kasell's, and David Kasell's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Alberico Sessa, Joseph Kasell, and David Kasell must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Each party shall bear its own costs and expenses associated with the above-referenced

arbitration.

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 = \$375.00

#### **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. In this matter, 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
Total Member Fees	= \$7,000.00

#### **Adjournment Fees**

The following adjournment fees are assessed:

August 4-6 and 23-25, 2004, joint adjournment request	= \$1,200.00
Respondent Merrill Lynch's share	= \$1,200.00

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: January 12, 2004 1 session	
Five (5) Hearing sessions @ \$1,200.00/session	= \$6,000.00
Hearings: December 1, 2004 2 sessions	
December 2, 2004 2 sessions	
December 3, 2004 1 session	
Total Forum Fees	= \$7,200.00

1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimants have been assessed \$3,600.00 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Merrill Lynch has been assessed \$3,600.00 of the forum fees.

**Fee Summary**

1. Claimants are jointly and severally liable for:

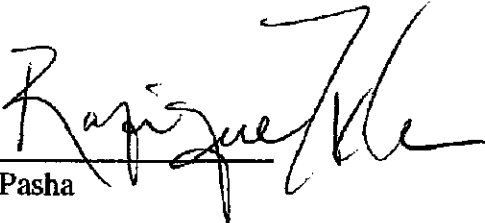
Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$ 3,600.00</u>
Total Fees	= \$ 3,975.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,400.00

2. Respondent Merrill Lynch is solely liable for:


Member Fees	= \$ 7,000.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	<u>= \$ 3,600.00</u>
Total Fees	= \$11,800.00
<u>Less payments</u>	<u>= \$ 8,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,600.00

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**

  
\_\_\_\_\_  
Rafique Pasha

12/8/04  
Signature Date

  
\_\_\_\_\_  
Parveen Pasha

12/8/04  
Signature Date

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Merrill Lynch, Pierce, Fenner and Smith Inc.

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

\_\_\_\_\_  
Alberico Sessa

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

\_\_\_\_\_  
Joseph Kasell

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

\_\_\_\_\_  
David Kasell

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

**Parties' Signatures**

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Rafique Pasha

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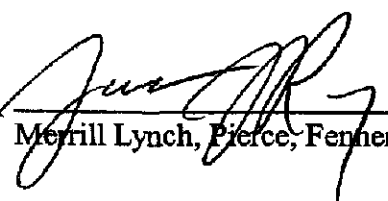
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Parveen Pasha

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Signature Date



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Merrill Lynch, Pierce, Fenner and Smith Inc.

12/17/04

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Signature Date

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Alberico Sessa

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Signature Date

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Joseph Kasell

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Signature Date

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David Kasell

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Signature Date

**Parties' Signatures**

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Parveen Pasha

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Merrill Lynch, Pierce, Fenner and Smith Inc.


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Signature Date



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Alberico Sessa



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Signature Date

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Joseph Kasell

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Signature Date

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David Kasell

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Parveen Pasha

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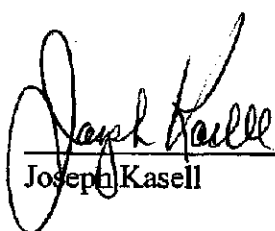
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Alberico Sessa

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Signature Date



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Joseph Kasell

12/16/04

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Signature Date

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David Kasell

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Signature Date



**Parties' Signatures**

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Signature Date

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Parveen Pasha

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Joseph Kasell

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Signature Date



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David Kasell

12/20/04

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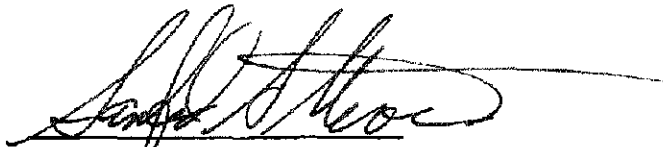
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**ARBITRATION PANEL**

Sanford S. Stevens, Esq.	-	Public Arbitrator, Presiding Chair
Richard E. Lerner, Esq.	-	Public Arbitrator
David W. Haynes	-	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 is which is my award.



Sanford S. Stevens, Esq.  
Public Arbitrator, Presiding Chair

1/3/05  
Signature Date

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Richard E. Lerner, Esq.  
Public Arbitrator

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

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David W. Haynes  
Non-Public Arbitrator

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

January 14, 2005  
Date of Service (For NASD office use only)

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Signature Date

Richard E. Lerner  
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Public Arbitrator

1/07/05  
Signature Date

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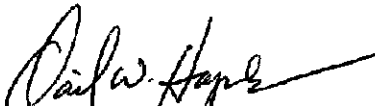
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Richard E. Lerner, Esq.  
Public Arbitrator

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Signature Date

  
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David W. Haynes  
Non-Public Arbitrator

1-10-05  
Signature Date

January 14, 2005  
Date of Service (For NASD office use only)