

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

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In the Matter of the Arbitration Between:

Michael Belasky and Sharyn Belasky, and Michael Belasky IRA (Claimants) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Gary K. Stern (Respondents)

Case Number: 02-07652

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants Michael Belasky and Sharyn Belasky ("Belaskys"), and Michael Belasky IRA ("Belasky IRA") hereinafter collectively referred to as "Claimants": Kevin P. Conway, Esq., Conway & Conway, New York, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Gary K. Stern ("Stern") hereinafter collectively referred to as "Respondents": Thomas L. Weisenbeck Esq., Bressler, Amery & Ross, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: December 19, 2002.  
Claimants signed the Uniform Submission Agreement.

Joint Statement of Answer filed by Respondents on or about: February 28, 2003.  
Respondent Merrill Lynch signed the Uniform Submission Agreement: March 21, 2003.  
Respondent Stern signed the Uniform Submission Agreement: April 2, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: fraud, conversion; breach of contract; breach of fiduciary duty; negligence; and failure to supervise. Claimants' claim involved various common stock and options including, but not limited to, Lycos, CMGI, Aether Systems, and eToys.

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 \$800,000.00; rescission;

pre- and post-judgment interest; costs, including costs and expenses of expert witnesses; reasonable attorneys' fees; punitive damages; and such other relief as the Arbitrators deem appropriate.

Respondents requested that the Claimants' Statement of Claim be dismissed with prejudice, in its entirety; that the Arbitrators enter an order expunging or striking this claim from Respondent Stern's permanent registration records maintained by the CRD; costs; and other further relief as they deem just and proper.

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

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.

During the October 5, 2004 hearing, Claimants withdrew all claims against Respondent Stern.

#### **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. Respondent Merrill Lynch is liable for and shall pay to Claimants compensatory damages in the amount of \$100,000.00.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gary Stern'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, Respondent Gary Stern must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
  - a. Arbitrator Kessel dissents from this recommendation for expungement.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

#### **FEEES**

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. 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

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

December 10-11, 2003, adjournment by Respondents = \$1,200.00

**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:

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00

Pre-hearing conference: May 28, 2003 1 session

Eight (10) Hearing sessions @ \$1,200.00 = \$12,000.00

Hearing Dates: November 14, 2003 2 sessions  
November 17, 2003 2 sessions  
October 4, 2004 2 sessions  
October 5, 2004 2 sessions  
October 6, 2004 2 sessions

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Total Forum Fees = \$13,200.00

1. The Panel has assessed \$13,200.00 of the forum fees against Respondent Merrill Lynch.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimants requested duplication of hearing tapes = \$105.00

2. Respondent Merrill Lynch requested duplication of hearing tapes = \$105.00

**Fee Summary**

1. Claimants are jointly and severally liable for:	
Initial Filing Fee	= \$ 375.00
<u>Administrative Costs</u>	= \$ 105.00
Total Fees	= \$ 480.00
<u>Less payments</u>	= \$ 1,575.00
Refund Due Claimant	= \$ 1,095.00
2. Respondent Merrill Lynch is solely liable for:	
Member Fees	= \$ 7,000.00
Forum Fees	= \$13,200.00
<u>Administrative Costs</u>	= \$ 105.00
Total Fees	= \$20,305.00
<u>Less payments</u>	= \$11,000.00
Balance Due NASD Dispute Resolution	= \$ 9,305.00
3. Respondents are jointly and severally liable for:	
<u>Adjournment Fees</u>	= \$ 1,200.00
Total Fees	= \$ 1,200.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

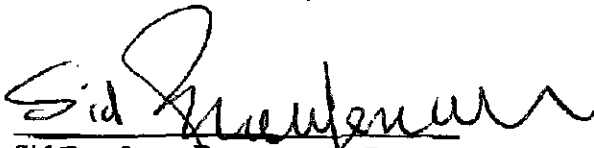
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
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**ARBITRATION PANEL**

Sid Braufman, Esq.	-	Public Arbitrator, Presiding Chairperson
Krishna M. Vempaty, Esq.	-	Public Arbitrator
Joseph Keith Kessel, Esq.	-	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.

  
\_\_\_\_\_  
Sid Braufman, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Krishna M. Vempaty, Esq.  
Public Arbitrator

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

**Concurring in Part, Dissenting in Part Arbitrator's Signature**

Arbitrator Kessel dissents from the portion of the Award recommending expungement of Respondent Stern's CRD records.

\_\_\_\_\_  
Joseph Keith Kessel, Esq.  
Non-Public Arbitrator

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

\_\_\_\_\_  
November 29, 2004  
Date of Service (For NASD Dispute Resolution use only)

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Krishna M. Vempaty  
Krishna M. Vempaty, Esq.  
Public Arbitrator

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Signature Date

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Public Arbitrator, Presiding Chairperson

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Joseph Keith Kessel, Esq.  
Non-Public Arbitrator

11/22/04  
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Signature Date

November 29, 2004

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Date of Service (For NASD Dispute Resolution use only)