

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Edith Anderson

Case Number: 02-07689

Name of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.;
David H. Komansky; and,
Deepak D. Raj

Hearing Site: Dallas, Texas

NATURE OF DISPUTE

Public Customer v. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

Claimant Edith Anderson, hereinafter collectively referred to as "Claimant": Jakes Jordaan, Esq. and Patricia Riley, Esq. of Jordaan & Riley, PLLC, located in Dallas, Texas.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and David H. Komansky ("Komansky") were represented by: Charles A. Gall, Esq., Joel R. Sharp, Esq., Tracy Robertson, Esq. and Amy C. Hinzmann, Esq. of the firm of Jenkins & Gilchrist, located in Dallas, Texas.

Respondent Deepak D. Raj ("Raj") was represented by: Betty Santangelo, Esq. of the firm of Schulte Roth & Zabel, LLP, located in New York, New York.

CASE INFORMATION

Statement of Claim filed: December 20, 2002.

Claimant signed the Uniform Submission Agreement: December 16, 2002.

Claimant's First Amendment and Supplement to Statement of Claim filed: March 14, 2004.

Statement of Answer filed by Respondent Merrill Lynch: April 11, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: April 15, 2003.

Respondent Raj signed the Uniform Submission Agreement: April 21, 2003.

Respondent Raj's Answer and Motion to Dismiss the Amended Statement of Claim filed: April 11, 2003.

Motion to Dismiss and Adoption of the Statement of Answer of Merrill Lynch and Raj filed by

Respondent Komansky: April 11, 2003.

Claimant's Response to Respondent Komansky's Motion to Dismiss filed: May 22, 2003.
Claimant's Response to Respondent Raj's Motion to Dismiss Amended Statement of Claim filed: May 22, 2003.

Claimant's Motion for Partial Summary Judgment Against Respondent Merrill, Lynch, Pierce, Fenner & Smith Pursuant to Texas Securities Act §33A(2) filed on or about: May 8, 2003.
Respondent Merrill Lynch's Response to Claimant's Motion for Partial Summary Judgment filed: June 17, 2003.

Claimant's Reply and Supplement to Motion for Partial Summary Judgment Against Respondent Merrill, Lynch, Pierce, Fenner & Smith Pursuant to Texas Securities Act §33A(2) filed on or about: June 30, 2003.

Respondent Merrill Lynch's Motion for Summary Judgment filed: October 7, 2003.
Respondent Raj's Memorandum in Further Support of His Motion to Dismiss and for Summary Judgment, as well as Motion to Strike Certain Exhibits filed: October 7, 2003.
Claimant's Supplemental Response and Brief in Opposition to Respondent Merrill Lynch's Motions to Dismiss; Claimant's Response and Brief in Opposition to Respondent Merrill Lynch's Motion for Summary Judgment; Claimant's Response and Brief in Opposition to Respondent Deepak Raj's Motions to Dismiss, For Summary Judgment and to Strike Certain Exhibits; and, Claimant's Brief in Support of Claimant's Motion for Partial Summary Judgment Pursuant to Texas Securities Act §33A(2) filed: October 30, 2003.

Stipulation for Dismissal of Respondent Raj filed: December 18, 2003.

Claimant's Motion to Temporarily Inactivate the Case filed: July 15, 2004
Respondent Merrill Lynch's and Komansky's Response to Claimant's Motion to Temporarily Inactivate the Case filed: July 16, 2004

Claimant's Withdrawal of Claim filed on or about: October 1, 2004.
Respondent Komansky's Request to Expunge filed: October 4, 2004.
Respondent Raj's Supplemental Motion for Expungement filed: August 10, 2004.
Respondent Raj's Final Supplemental Motion for Expungement filed: October 4, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: violation of the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"); negligent misrepresentation; breach of the implied representation of fair dealing and full disclosure; breach of fiduciary duty; violation of Texas Securities Act §33A(2); violations of Texas Business and Commerce Code, §27.01, Fraud in Real Estate and Stock Transactions; violation of the NASD Business Conduct Rule 2210-Standards of Commercial Honor and Principles of Trade; violations of the NASD Business Conduct Rule 2120-Use of Manipulative, Deceptive or Other Fraudulent Devices; violation of NASD Business Conduct Rule 2310-Recommendations to Customers (Suitability); violations of NASD Business Conduct Rule 2310-2 – Fair dealings with Customers; civil conspiracy; aiding

and abetting; violations of Section 10(b) of the Securities Exchange Act and Rule 10B-5; and, control person liability for the individual Respondents pursuant to Section 20(A) of the exchange Act. These causes of action related to various stock recommendations made by the Merrill Lynch research analysts that were allegedly tainted by a desire to aid Merrill Lynch's investment banking business.

Unless specifically admitted in their Answer, Respondents Merrill Lynch and Komansky denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant failed to state a claim for which relief may be granted and their claims should be dismissed;
2. Claimant is a sophisticated investors with significant resources and their allegations are an effort to avoid responsibility for their own investment decisions;
3. Claimant's assertion that Merrill Lynch's research was false or misleading is insufficient as a matter of law because Claimant has failed to specify any material misrepresentations or omissions of fact by Merrill Lynch;
4. Claimant's allegations fail to state a claim for relief under the Texas Deceptive Trade practices Act; and,
5. Claimant's claims are barred by waiver, estoppel, ratification, assumption of risk and comparative negligence, as well as Claimant's own failure to mitigate alleged damages.

Unless specifically admitted in his Answer, Respondent Raj denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant failed to state a claim against Respondent Raj for which any relief can be granted;
2. Claimant suffered no damages by reason of the acts complained of in the Statement of Claim;
3. Respondent Raj is not liable to Claimant in any amount because, at all times relevant herein, Raj acted properly and in good faith and had no involvement with respect to Claimant's accounts;
4. Respondent Raj acted in good faith and did not directly or indirectly induce any act or acts constituting a violation of the federal securities laws;
5. Claimant's claims are barred because the risks inherent in the investments at issue were fully disclosed and/or known to Claimant and she assumed those risks. Moreover, any alleged losses incurred by Claimant were the direct result of adverse market conditions and/or the acts of the issuer of the securities at issue and cannot be attributed to Raj;
6. Claimant's claims are barred by applicable statutes of limitation and/or the doctrines of laches, estoppel, waiver and ratification because, among other things, Claimant did not timely raise objections or complaints when she received trade confirmations, account statements, and other account information;
7. Claimant's claims are barred under the doctrine of contributory negligence because she negligently contributed to her own injury;
8. Claimant's claims are barred or mitigated under the doctrine of comparative

- negligence because they negligently contributed to their own injury to a greater degree than Raj allegedly did;
9. Claimant's claims are barred because her alleged injuries were not caused, legally, proximately, or otherwise, by Raj or by the alleged misconduct pleaded in the Statement of Claim;
 10. Claimant's claims are barred because Respondent Raj did not act with intent, scienter, or in breach of any duty of care or loyalty owed to Claimant;
 11. Claimant's claims are barred because she failed to mitigate damages;
 12. Claimant's claims are barred because Raj at all times conducted himself in compliance with the requirements of all applicable provisions of federal and state law;
 13. Claimant's claims are barred because Claimant failed to exercise care and due diligence over the investments in her securities accounts;
 14. Claimant is not entitled to, and fails to state a claim for, actual damages, exemplary damages, punitive damages, prejudgment interest, attorneys' fees and costs; and,
 15. As applicable, the defenses asserted by Respondent Merrill Lynch are incorporated by reference.

RELIEF REQUESTED

Claimant Edith Anderson requested:

Compensatory Damages	\$ 205,996.37
Punitive/Treble Damages (DTPA)	\$ 411,992.74
Interest	\$ 51,497.03
Attorneys' Fees	\$ 68,665.46
Other Costs	As determined by the Panel
Other Monetary/Non-Monetary Relief if any:	As determined by the Panel

Respondent Merrill Lynch requested that Claimant take nothing by her claims and Respondent recover its fees and expenses.

Respondent Komansky requested that the claim be dismissed and that all references to the Statement of Claim and the allegations asserted therein should be expunged from Respondents' CRD records.

Respondent Raj requested that his Motion to Dismiss be granted and the Statement of Claim dismissed with prejudice as to Raj. In addition, Raj requested an award of his attorneys' fees and costs, and that all references to the Statement of Claim and the allegations asserted therein should be expunged from Respondents' CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Komansky did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is

bound by the determination of the Panel on all issues submitted.

On December 18, 2003, the Parties filed an executed Stipulation of Dismissal dismissing this claim against Respondent Raj.

On September 28, 2004, the Panel granted Claimant's Motion to Temporarily Inactivate the Case and canceled the hearing scheduled to begin October 4-8, 2004.

On or about October 1, 2004, 2004, Claimant withdrew her claims in this matter.

On or about October 4, 2004, the Panel granted Raj's Motion to Expunge CRD Record.

On or about October 14, 2004, the Panel granted Komansky's Motion to Expunge CRD Record.

AWARD

After considering the pleadings, the motions and other documents filed in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to the Stipulation of Dismissal and the Withdrawal of Claims filed in this matter, the claims against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., David H. Komansky and Deepak D. Raj are hereby dismissed with prejudice;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David H. Komansky'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 David H. Komansky must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. In addition, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Deepak D. Raj'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 Deepak D. Raj must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
4. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein; and,
5. Any and all relief not specifically addressed herein, including punitive or 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

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 and the following member fees are assessed:

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: None.

Forum Fees and Assessments

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

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: September 16, 2003 1 session	
September 22, 2003 1 session	
<hr/> Total Forum Fees	<hr/> = \$ 2,400.00

The Panel has assessed \$1,200.00 of the forum fees jointly and severally to Claimant Edith Anderson and has assessed the remaining \$1,200.00 of the forum fees jointly and severally to Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., David H. Komansky and Deepak D. Raj.

EEE SUMMARY

Claimant Edith Anderson is liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 1,575.00
<u>Less payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for:

Member Fees	= \$ 7,000.00
<u>Less payments</u>	<u>= \$ 5,250.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,750.00

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., David H. Komansky and Deepak D. Raj

are jointly and severally liable for:

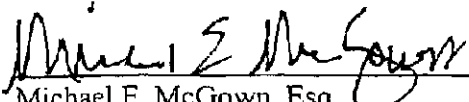
Forum Fees	= \$ 1,200.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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

ARBITRATION PANEL

Michael E. McGown, Esq. - Public Arbitrator, Presiding Chairperson
Thomas Everett Jaeb - Public Arbitrator
Ralph Steven Janvey - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Michael E. McGown, Esq.
Public Arbitrator, Presiding Chairperson

1 Nov 2004

Signature Date

Thomas Everett Jaeb
Public Arbitrator

Signature Date

Ralph Steven Janvey
Non-Public Arbitrator

Signature Date

11/8/04 MA

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 02-07689

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are jointly and severally liable for:

Forum Fees	= \$ 1,200.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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Thomas Everett Jaeb - Public Arbitrator

Ralph Steven Janvey - Non-Public Arbitrator

Concurring Arbitrators' Signatures

 Michael E. McGown, Esq.
 Public Arbitrator, Presiding Chairperson

Signature Date

T. E. Jaeb
 Thomas Everett Jaeb
 Public Arbitrator

November 4th, 2004

Signature Date

 Ralph Steven Janvey
 Non-Public Arbitrator

Signature Date

11/8/04 *Jan*
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NASD Dispute Resolution
Arbitration No. 02-07689
Award Page 7

are jointly and severally liable for:

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Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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Thomas Everett Jacob - Public Arbitrator
Ralph Steven Janvey - Non-Public Arbitrator


Concurring Arbitrators' Signatures

Michael E. McGown, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Thomas Everett Jacob
Public Arbitrator

Signature Date



Ralph Steven Janvey
Non-Public Arbitrator

10/29/04

Signature Date

11/8/04 

Date of Service (For NASD Dispute Resolution office use only)