

STIPULATED AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Ronald L. Wence and Shirley A. Wence

and

03-01002
Phoenix, Arizona

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Raj K. Kohli

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

REPRESENTATION OF PARTIES

Ronald L. Wence and Shirley A. Wence ("**Claimants**") were represented by Bruce R. Heurlin, Esq., Karp Heurlin & Weiss, P.C., Tucson, AZ 85712.

Merrill Lynch Pierce Fenner & Smith, Inc. ("**Respondent Merrill Lynch**") and Raj K. Kohli ("**Respondent Kohli**") were represented by Bruce W. Day, Esq., Bill P. Guest, Esq., and D. Michael O'Neil, Esq., Day Edwards Propester & Christensen, P.C. Oklahoma City, OK 73102.

CASE INFORMATION

Statement of Claim filed by Claimants: February 3, 2003

Claimant Ronald L. Wence and Shirley A. Wence signed the Uniform Submission Agreement February 3, 2003

Answer filed by Respondents: April 23, 2003

Respondents Merrill Lynch signed the Uniform Submission Agreement April 16, 2003.
Respondent Raj Kohli signed the Uniform Submission Agreement April 23, 2003

CASE SUMMARY

Claimants asserted the following causes of action: Negligence, Unsuitability, Common Law Fraud, Misrepresentations and Omissions, Breach of Fiduciary and Other Duties, Failure to Supervise, Respondeat Superior, and Breach of Industry Rules. Claimants' claim concerned

specified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants fail to state a claim upon which relief can be granted; Claimants' claims are barred by the applicable statute of limitations; Claimants' claims are barred by the doctrines of waiver, estoppel, ratification and laches; Claimants' claims are barred because Respondents had a good faith basis for their recommendations, if any; Claimants' claims are barred because the risks inherent in the investments at issue were fully disclosed or known to them and they assumed those risks; Claimants' claims are barred because they failed to mitigate their damages; Claimants' claims are barred because they suffered no damages by reason of the acts complained of in the Statement of Claim; Claimants' alleged damages, if any, were proximately caused by their own conduct; and Claimants do not have a private right of action for alleged violation of NASD rules. *See Silverstein v. Merrill Lynch*, 618 F.Supp. 436 (S.D.N.Y. 1985).

RELIEF REQUESTED

Claimant requested the following relief:

Damages in the approximate amount of \$500,000.00, interest, attorney fees and costs.

Respondents requested dismissal of the Claimants' claim. In furtherance of the parties' agreement concerning the resolution of this matter, Claimants and Respondents seek an Order recommending expungement of the CRD registration records of Respondent Raj Kohli of all reference to these proceedings.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies. The parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings and the stipulation of the parties, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination and find as follows:

1. The parties have agreed to settle this matter for a sum certain to be paid by Respondent Merrill Lynch Pierce, Fenner & Smith, Incorporated;
2. Claimants' claims are hereby dismissed in their entirety with prejudice, and all other requests for relief are denied;

3. All parties are to bear their own attorneys' fees;
4. Discovery in this matter has established grounds for withdrawal of the claims in the Statement of Claim against Raj Kohli, as being without sufficient factual basis;
5. Expungement of reference to these proceedings and the settlement from the registration records of Raj Kohli maintained by the NASD Central Registration Depository ("CRD") would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements;
6. Accordingly, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Raj K. Kohli'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 Raj K. Kohli must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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 = \$300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is(are) Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

1 Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
	October 10, 2003	1 session		
Total Forum Fees			\$	<u>1,125.00</u>

The Arbitration Panel has assessed \$562.50 of the forum fees to Ronald L. Wence and Shirley A. Wence.

The Arbitration Panel has assessed \$562.50 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc. and Raj K. Kohli.

Fee Summary

Claimants, Ronald L. Wence and Shirley A. Wence shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
Retained Hearing Session Deposit pursuant to Rule 10332(g)	= \$	562.50
<u>Forum Fees</u>	= \$	<u>562.50</u>
Total Fees	= \$	1,425.00
<u>Less payments</u>	= \$	<u>-1,425.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., shall be and hereby is liable for:

Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	<u>-5,200.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Raj K. Kohli, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	562.50
Total Fees	= \$	562.50
<u>Less payments</u>	= \$	<u>-0.00</u>

NASD Dispute Resolution
Arbitration No. 03-01002
Stipulated Award Page 5 of 5


Balance Due NASD Dispute Resolution = \$ 562.50

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Howard W. Shannon - Public Arbitrator, Presiding Chair
Johnita E. McBride - Public Arbitrator
Charles Taylor - Non-Public Arbitrator

Concurring Arbitrators:


Howard W. Shannon
Public Arbitrator, Presiding Chair


Signature Date

Johnita E. McBride
Public Arbitrator

Signature Date

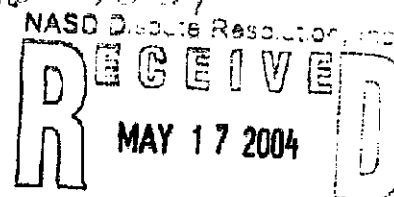
Charles Taylor
Non-Public Arbitrator

Signature Date

5-21-04
Date of Service (For NASD office use only)

To: Edward Anderson
312-236-9239

NASD Dispute Resolution
Arbitration No. 03-01002
Stipulated Award Page 5 of 5



Balance Due NASD Dispute Resolution = \$ 562.50

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Howard W. Shannon - Public Arbitrator, Presiding Chair
Johnita E. McBride - Public Arbitrator
Charles Taylor - Non-Public Arbitrator

Concurring Arbitrators:

Howard W. Shannon
Public Arbitrator, Presiding Chair

Signature Date

Johnita E. McBride
Public Arbitrator

Signature Date



Charles Taylor
Non-Public Arbitrator

14 May 04

Signature Date

05/20/2004 14:44 FAX

NASD

002/002

NASD Dispute Resolution
Arbitration No. 03-01002
Stipulated Award Page 5 of 5

Balance Due NASD Dispute Resolution = \$ 362.50

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Howard W. Shannon - Public Arbitrator, Presiding Chair

Johnita E. McBride - Public Arbitrator

Charles Taylor - Non-Public Arbitrator

Concurring Arbitrators:

Howard W. Shannon
Public Arbitrator, Presiding Chair

Johnita E. McBride
Public Arbitrator

Charles Taylor
Non-Public Arbitrator

Signature Date

Signature Date

Signature Date