

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

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In the Matter of the Arbitration Between:

Anil Malik, Individually and as Trustee to the Malik Family Trust, dated November 5, 1994, and  
Anupam Malik, Individually and as Trustee to the Malik Family Trust, dated November 5, 1994,  
Claimants v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Respondent

Case Number: 03-01524

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customers v. Member

**REPRESENTATION OF PARTIES**

For Claimants:

Robert A. Graham, Jr., Esq.  
Law Offices of Robert A. Graham, Jr.  
Grants Pass, Oregon

For Respondent:

Thomas L. Taylor, III, Esq.  
Winstead Sechrest & Minick  
Houston, Texas

**CASE INFORMATION**

Statement of Claim filed: March 3, 2003

Amended Statement of Claim filed: October 22, 2003

Claimants' Joint Uniform Submission Agreement signed: March 2, 2003

Statement of Answer to Statement of Claim filed by Respondent: May 20, 2003

Statement of Answer to Amended Statement of Claim filed by Respondent: November 21, 2003

Respondent's Uniform Submission Agreement signed: May 16, 2003

### **CASE SUMMARY**

In the Statements of Claim, Claimants alleged breach of contract, breach of fiduciary duty, fraud, and negligent misrepresentation, involving securities in ALTR, AOL, BRCD, ORCL, and SUNW.

In the Statements of Answer, Respondent denied the allegations of wrongdoing set forth in the Claimants' Statements of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statements of Claim, Claimants requested \$988,978.00 in compensatory damages, interest, unspecified punitive damages, and costs, including attorney's fees.

In the Statements of Answer, Respondent requested dismissal of the Claimants' Statements of Claim in their entirety and costs.

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

On October 22, 2003, Claimants filed a Motion to Amend Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(c). The Panel granted the amendment in the Initial Pre-Hearing Conference Scheduling Order dated September 24, 2003.

On March 31, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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**

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable to and shall pay Claimants the sum of \$4,500.00 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimants interest on \$4,500.00 at the rate of 10% per annum from March 9, 2001 to February 4, 2005.
- 3) Respondent is liable to and shall pay Claimants interest on \$4,500.00 at the rate of 10% per annum from January 24, 2006 until the date that this Award is paid in full.
- 4) Respondent is liable to and shall pay Claimants the sum of \$375.00 as reimbursement for the Initial Claim Filing Fee.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied, including Claimants' request for punitive damages.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 375.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 4,000.00
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

**Adjournment Fees**

The following adjournment fees are assessed:

August 2-6, 2004 hearing adjournment	= \$ 1,200.00
January 31-February 4, 2005 hearing adjournment	= \$ 1,200.00

1. The Panel assessed \$1,200.00 of the adjournment fees jointly and severally to Claimants.
2. The Panel assessed \$1,200.00 of the adjournment fees to Respondent.

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: November 30, 2004 1 session	

3 Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 3,600.00
Pre-hearing conferences: September 24, 2003 1 session	
April 29, 2004 1 session	
April 28, 2005 1 session	

4 Hearing sessions @ \$1,200.00/session	= \$ 4,800.00
Hearings: January 23, 2006 2 sessions	
January 24, 2006 2 sessions	

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<b>Total Forum Fees</b>	<b>= \$ 8,850.00</b>
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The Panel assessed \$8,850.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

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

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	= \$ 8,850.00
Total Fees	= \$17,050.00
<u>Less payments</u>	= \$( 7,600.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 9,450.00</b>

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

**ARBITRATION PANEL**

Michael R. Mitchell  
Thomas E. Shuck  
Michael G. Clark

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Michael R. Mitchell  
Chair, Public Arbitrator

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

  
\_\_\_\_\_  
Thomas E. Shuck  
Public Arbitrator

1-27-06  
Signature Date

\_\_\_\_\_  
Michael G. Clark  
Non-Public Arbitrator

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

1/30/06  
Date of Service

**ARBITRATION PANEL**

Michael R. Mitchell	-	Public Arbitrator, Presiding Chair
Thomas E. Shuck	-	Public Arbitrator
Michael G. Clark	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Michael R. Mitchell  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Thomas E. Shuck  
Public Arbitrator

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

  
\_\_\_\_\_  
Michael G. Clark  
Non-Public Arbitrator

January 28, 2006  
Signature Date

1/30/06  
Date of Service

**ARBITRATION PANEL**

Michael R. Mitchell	-	Public Arbitrator, Presiding Chair
Thomas E. Shuck	.	Public Arbitrator
Michael G. Clark	.	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Michael R. Mitchell  
Chair, Public Arbitrator

JAN. 28, 2006  
Signature Date

\_\_\_\_\_  
Thomas E. Shuck  
Public Arbitrator

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

\_\_\_\_\_  
Michael G. Clark  
Non-Public Arbitrator

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

1/31/06  
Date of Service