

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jacobus Raven and Hendrika Raven, Trustees of The Raven Family Trust U/A dated 6/6/94,
Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Richard B. Sladek, Respondents

Case Number: 03-01670

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

Mitchell S. Ostwald, Esq.
The Law Offices of Mitchell S. Ostwald
Sacramento, California

For Respondents:

Susan L. Hoffman, Esq.
Todd A. Boock
Bingham McCutchen
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: March 7, 2003

Claimants' Uniform Submission Agreement signed: February 28, 2003

Joint Statement of Answer filed by Respondents: May 23, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement
signed: April 1, 2003

Respondent Richard B. Sladek's Uniform Submission Agreement signed: June 24, 2003

CASE SUMMARY

Claimants alleged breach of fiduciary duty, fraud, violation of California Civil Code §1573, failure to supervise, elder abuse, unfair or deceptive practices against senior citizens, violation of Federal and State securities laws, NASD Rules of Fair Practice and NYSE Rules. Claimant's allegations involved various securities transactions, including, but not limited to, stock purchases of QCOM, BLDP, CPST, SIRI, TGX, CPN, SFE, ICGE, INVN, FMKT, ELY, SWC, NOVN, and ITXC.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$1,100,00.00, disgorgement and restitution of all earnings, profits, compensation and benefits received, lost opportunity costs, unspecified punitive damages, interest and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, and expungement of all reference to the above captioned arbitration from Respondents' registration records maintained by the NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

On March 24, 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.

On May 16, 2003, Respondents' counsel signed a Waiver Agreement on behalf of Respondents expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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. Respondents are jointly and severally liable to and shall pay Claimants the sum of \$672,094.00 in compensatory damages.
2. Respondents are jointly and severally liable to and shall pay Claimants the sum of \$500.00 for reimbursement of arbitration filing fees.
3. Respondents are jointly and severally liable to and shall pay Claimants the sum of \$20,000.00 in costs.
4. Except as noted above, the parties shall bear their respective costs, including attorney's fees.
5. All other relief requested and not expressly granted is denied.

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	= \$ 500.00
--------------------------	-------------

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, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

Adjournment Fees

The following adjournment fees are assessed:

January 20, 2004 to January 23, 2004 Hearing Dates, adjournment
requested by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. = \$1,200.00

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:

(2) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session = \$ 900.00
Pre-hearing conferences:

November 25, 2003 1 session
April 30, 2004 1 session

(3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 3,600.00
Pre-hearing conferences:

September 18, 2003 1 session
December 9, 2003 1 session
April 15, 2004 1 session

(7) Hearing sessions @ \$1200.00/session = \$ 8,400.00
Hearings:

May 5, 2004 2 sessions
May 6, 2004 2 sessions
May 7, 2004 2 sessions
May 8, 2004 1 session

Total Forum Fees = \$12,900.00

The Panel assessed the entire \$ 12,900.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

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

Initial Filing Fee	= \$ 500.00
<u>Less payments</u>	<u>= \$(1,700.00)</u>
Refund Due Claimant	= \$(1,200.00)

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Adjournment Fee</u>	<u>= \$ 1,200.00</u>
Total Fees	= \$ 9,750.00
<u>Less payments</u>	<u>= \$(9,750.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Richard B. Sladek are charged jointly and severally with the following fees and costs:

Forum Fees	= \$12,900.00
<u>Less payments</u>	<u>= \$ (0.00)</u>
Balance Due NASD Dispute Resolution	= \$12,900.00

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

Walter P. Hitchcock	-	Public Arbitrator, Presiding Chair
Allan Blau, Esq.	-	Public Arbitrator
Herbert L. Brown	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Walter P. Hitchcock
Chair, Public Arbitrator

Signature Date

Allan Blau, Esq.
Public Arbitrator

Signature Date

Herbert L. Brown
Non-Public Arbitrator

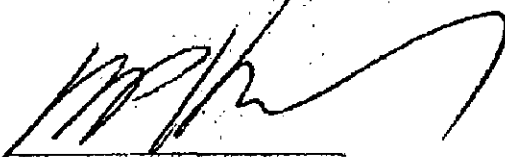
Signature Date

Date of Service

ARBITRATION PANEL

Walter P. Hitchcock	-	Public Arbitrator, Presiding Chair
Allan Blau, Esq.	-	Public Arbitrator
Herbert L. Brown	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Walter P. Hitchcock
Chair, Public Arbitrator

5/24/2004
Signature Date

Allan Blau, Esq.
Public Arbitrator

Signature Date

Herbert L. Brown
Non-Public Arbitrator

Signature Date

5/26/04
Date of Service

ARBITRATION PANEL

Walter P. Hitchcock	-	Public Arbitrator, Presiding Chair
Allan Blau, Esq.	-	Public Arbitrator
Herbert L. Brown	-	Non-Public Arbitrator

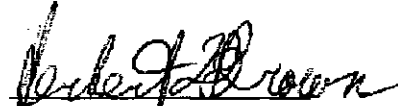
Concurring Arbitrators' Signatures

Walter P. Hitchcock
Chair, Public Arbitrator

Signature Date

Allan Blau, Esq.
Public Arbitrator

Signature Date



Herbert L. Brown
Non-Public Arbitrator

5-24-2004
Signature Date

5/26/04
Date of Service

NASD Dispute Resolution
Arbitration No. 03-01670
Award Page 6 of 6

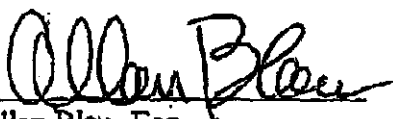
ARBITRATION PANEL

Walter P. Hitchcock	-	Public Arbitrator, Presiding Chair
Allan Blau, Esq.	-	Public Arbitrator
Herbert L. Brown	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Walter P. Hitchcock
Chair, Public Arbitrator

Signature Date



Allan Blau, Esq.
Public Arbitrator



Signature Date

Herbert L. Brown
Non-Public Arbitrator

Signature Date



Date of Service