

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Roger Eng, Sr., and Sylvia Eng, individually and as Trustees and on behalf of the Eng Revocable Family Trust, the William Jack Chow and Anne K. Chow Trust C, SFT Properties, LLC, and Dorrey Company, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Penny Huang, Respondents

Case Number: 03-01866

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:

Kenneth C. Mennemeier, Esq.
Seth L. Hanson, Esq.
Mennemeier, Glassman and Stroud, LLP
Sacramento, California

CASE INFORMATION

Statement of Claim filed: March 14, 2003

Claimants' Joint Uniform Submission Agreement signed: February 24, 2003

Joint Statement of Answer filed by Respondents: June 4, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement signed: April 14, 2003

Respondent Penny Huang's Uniform Submission Agreement signed: May 30, 2003

CASE SUMMARY

Claimants alleged breach of fiduciary duty, fraud, constructive fraud, failure to supervise, and violation of federal and state securities laws. Claimants' allegations involved various internet and technology stocks including, but not limited to, Softbank, Hikari Tsushin, Sony, Nippon Telegraph & Telephone ADR, Qualcomm, XO communications, Yahoo, AOL, ICGE, and Nextlink. Claimants' allegations also involved mutual funds.

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

RELIEF REQUESTED

Claimants requested not less than \$700,000.00 in compensatory damages, disgorgement of earnings, lost opportunity costs, unspecified punitive damages, pre-judgment and post-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, expungement of this matter from Respondent Penny Huang's record with NASD, and that Claimants be ordered to pay all NASD forum fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On April 3, 2003, Claimants Roger Eng, Sr., and Sylvia Eng, individually and as Trustees of the Eng Revocable Family Trust, the William Jack Chow and Anne K. Chow Trust C 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 August 11, 2003, Claimant Sylvia Eng, on behalf of Claimants SFT Properties, LLC and Dorrey Company, 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 waivers 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) Respondents are jointly and severally liable and shall pay the sum of \$20,000.00 in compensatory damages directed to Claimant Roger Eng, Sr.'s IRA.
- 2) Respondents are jointly and severally liable and shall pay the sum of \$20,000.00 in compensatory damages directed to Claimant Sylvia Eng's IRA.
- 3) Respondents are jointly and severally liable and shall pay Claimant William Jack Chow and Anne K. Chow Trust C the sum of \$200,000.00 in compensatory damages.
- 4) Claimants Eng Revocable Family Trust, SFT Properties, LLC, and Dorrey Company's claims are denied in their entirety.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) 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 = \$ 375.00

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 = \$ 2,250.00

Pre-Hearing Process Fee = \$ 750.00

Hearing Process Fee = \$ 4,000.00

Total Member Fees = **\$ 7,000.00**

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 or the parties and the Panel. The following fees are assessed:

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

Pre-hearing conferences: April 20, 2004 1 session
December 2, 2004 1 session

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200.00

Pre-hearing conference: January 23, 2004 1 session

(7) Hearing sessions @ \$1,200.00/session = \$ 8,400.00

Hearings: December 6, 2004 2 sessions
December 7, 2004 2 sessions
December 8, 2004 2 sessions
December 9, 2004 1 session

Total Forum Fees = **\$10,500.00**

1. The Panel assessed \$5,250.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$5,250.00 of the forum fees jointly and severally to Respondents.

Fee Summary

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

| | |
|--|----------------------|
| Initial Filing Fee | = \$ 375.00 |
| Forum Fees | = \$ 5,250.00 |
| Total Fees | = \$ 5,625.00 |
| Less payments | = \$(1,575.00) |
| Balance Due NASD Dispute Resolution | = \$ 4,050.00 |

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

| | |
|--|------------------|
| Member Fees | = \$ 7,000.00 |
| Less payments | = \$(7,000.00) |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

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

| | |
|--|----------------------|
| Forum Fees | = \$ 5,250.00 |
| Balance Due NASD Dispute Resolution | = \$ 5,250.00 |

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

| | | |
|-------------------------|---|------------------------------------|
| Bruce T. Mitchell, Esq. | - | Public Arbitrator, Presiding Chair |
| Peter H. Daly | - | Public Arbitrator |
| Carlos Richard Mangum | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Bruce T. Mitchell, Esq.
Chair, Public Arbitrator

Signature Date

Peter H. Daly
Public Arbitrator

Signature Date

Carlos Richard Mangum
Non-Public Arbitrator


Signature Date

Date of Service

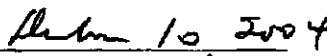
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Bruce T. Mitchell, Esq.
Chair, Public Arbitrator



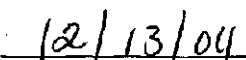
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Carlos Richard Mangum
Non-Public Arbitrator

Signature Date



Date of Service

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Chair, Public Arbitrator

Signature Date


Peter H. Daly
Public Arbitrator

12/13/04
Signature Date

Carlos Richard Mangum
Non-Public Arbitrator

Signature Date

12/13/04
Date of Service

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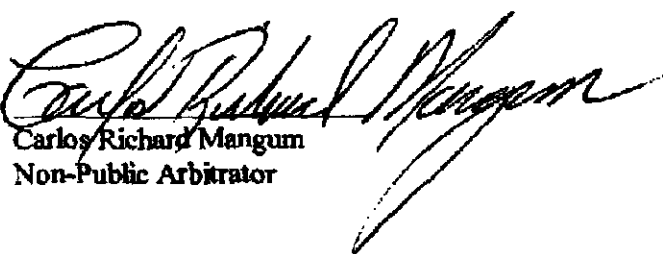
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Bruce T. Mitchell, Esq.
Chair, Public Arbitrator

Signature Date

Peter H. Daly
Public Arbitrator

Signature Date



Carlos Richard Mangum
Non-Public Arbitrator

12-10-04
Signature Date

12/13/04
Date of Service