

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

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In the Matter of the Arbitration Between:

Suk Tae Bae and Eun Jin Bae v. Merrill Lynch, Pierce, Fenner & Smith Inc. and Craig M. Cox

Case Number: 03-01963

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

Paul W. Thomas, Esq.  
Law Offices of Paul W. Thomas  
& Associates  
Carlsbad, California

For Respondents:

Negin Mirmirani, Esq.  
Loeb & Loeb LLP  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: March 10, 2003

Claimants Joint Uniform Submission Agreement signed: March 10, 2003

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and Craig Cox on: May 27, 2003

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

Respondent Craig M. Cox's Uniform Submission Agreement signed: April 9, 2003

### **CASE SUMMARY**

Claimants alleged breach of fiduciary duty, unauthorized trading, unsuitable recommendations, negligence, material omissions, and failure to supervise. Claimants alleged that Respondents' recommendations of investments were unsuitable, contained a high degree of investment risk and were in direct contravention of the Baes' stated investment objectives. Claimants allegations involved securities transactions Claimants' margin account involving companies such as Bea Systems, Centillum Communications, Computer Sciences Corp., Conexant Systems, Inc., Earthlink, élan Corp., EMC Corp., Extreme Networks, Foundry Networks, 12 Technologies, InfoSpace, Internet Capital Group, MSC Software, Micron Technologies, Tellium Inc., Tyco International Ltd., and Verisign.

Respondents denied all the allegations of wrongdoing set forth in Claimants' Statement of Claim. Respondents stated that the investments recommended were consistent with the Claimants' investment objectives, that the Claimants directed their own investments and that the decline in value of the Claimants' portfolio was due to market conditions and their own conduct.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$399,378.00, unspecified pre-judgment interest, unspecified punitive damages and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety.

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

On June 17, 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.

On March 17, 2004, Claimants dismissed Respondent Craig M. Cox with prejudice.

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 and the Parties request for this stipulated award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. On March 17, 2004, Claimants dismissed Respondent Craig M. Cox with prejudice. Thereafter, Claimants and Respondents entered into a confidential settlement agreement.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Craig M. Cox's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Craig M. Cox must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The parties shall bear their respective costs, including attorney's fees.
4. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure ("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	= \$ 300.00
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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, Piece, Fenner & Smith Inc. is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$2,750.00
<b>Total Member Fees</b>	<b>= \$5,200.00</b>

#### **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:

One (1) Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: December 5, 2003	1 session

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: September 11, 2003	1 session

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<b>Total Forum Fees</b>	<b>= \$1,575.00</b>
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1. The Panel assessed \$787.50 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$787.50 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.

**Fee Summary**

1. Claimants Suk Tae and Eun Jin Bae are charged jointly and severally with the following fees and costs:

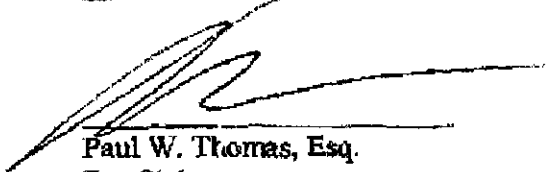
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 787.50
Total Fees	= \$ 1,087.50
Retained Deposit pursuant to NASD Code of Arbitration Procedure Rule 10332(f)	= \$ 337.50
Less payments	= \$(1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 787.50
Total Fees	= \$ 5,987.50
Less payments	= \$(5,950.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 37.50</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.

Parties' Signatures



Paul W. Thomas, Esq.  
For Claimants  
Suk Tae Bae and Eun Jin Bae

4/6/04  
Signature Date


Negin Mirmirani, Esq.  
For Respondents  
Merrill Lynch, Pierce, Fenner & Smith Inc.  
and Craig M. Cox

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

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Paul W. Thomas, Esq.  
For Claimants  
Suk Tae Bae and Eun Jin Bae

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Signature Date

  
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Negin Mirmirani, Esq.  
For Respondents  
Merrill Lynch, Pierce, Fenner & Smith Inc.  
and Craig M. Cox

4/8/04  
\_\_\_\_\_  
Signature Date

**ARBITRATION PANEL**

*David J. Berardo*  
*Elliott Finkel, Esq.*  
*Lewis H. Kairys*

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*Public Arbitrator, Presiding Chair*  
*Public Arbitrator*  
*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

*David J. Berardo*

David J. Berardo, Esq.  
Chair, Public Arbitrator

*4/12/04*

Signature Date

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Elliott Finkel, Esq.  
Public Arbitrator

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Signature Date

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Lewis H. Kairys  
Non-Public Arbitrator

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Signature Date

*4/20/04*  
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Date of Service



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*Lewis H. Kairys*

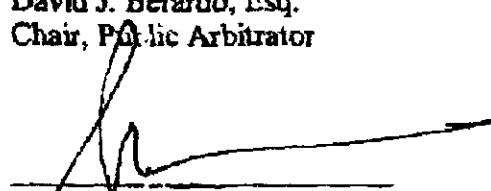
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*Public Arbitrator*  
*Non-Public Arbitrator*

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David J. Berardo, Esq.  
Chair, Public Arbitrator

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Signature Date

  
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Elliott Finkel, Esq.  
Public Arbitrator

4-12-07  
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Signature Date

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Lewis H. Kairys  
Non-Public Arbitrator

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Signature Date

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**Elliott Finkel, Esq.**  
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**Public Arbitrator**  
**Non-Public Arbitrator**

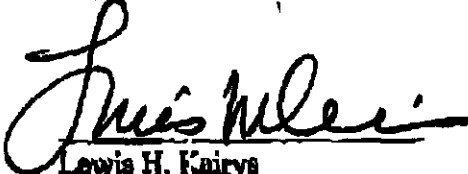
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Signature Date

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Elliott Finkel, Esq.  
Public Arbitrator

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

  
Lewis H. Kairys

Non-Public Arbitrator

4/20/04  
Signature Date

4/20/04  
Date of Service