

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants
Azam and Lisa Anwar

Case Number: 03-02284

Name of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.;
David H. Komansky; Deepak D. Raj; and,
Andrew J. Melnick

Hearing Site: Dallas, Texas.

NATURE OF DISPUTE

Public Customer v. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

Claimants Azam and Lisa Anwar, hereinafter referred to as "Claimants": Jakes Jordaan, Esq., of the firm of Jordaan & Riley, PLLC, located in Dallas, Texas.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and David H. Komansky ("Komansky"): Charles A. Gall, Esq. and Amy C. Hinzmann, Esq. of the firm of Jenkins & Gilchrist, located in Dallas, Texas.

Respondent Deepak D. Raj ("Raj"): Betty Santangelo, Esq., of the firm of Schulte Roth & Zabel LLP, located in New York, New York.

Respondent Andrew Melnick ("Melnick"): Erin K. Koenen, Esq., of the firm of Carter Ledyard & Milburn LLP, located in New York, New York.

CASE INFORMATION

Statement of Claim filed: March 31, 2003.

Claimants signed the Uniform Submission Agreement: March 24, 2003.

Statement of Answer filed by Respondent Merrill Lynch: May 28, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: April 15, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent Raj: May 28, 2003.

Respondent Raj signed the Uniform Submission Agreement: April 21, 2003

Respondent Melnick's Motion to Dismiss and Statement of Answer filed: May 28, 2003.

Respondent Melnick signed the Uniform Submission Agreement: May 21, 2003.

Respondent Komansky's Motion to Dismiss filed: May 28, 2003.
Respondent Komansky did not file an executed submission agreement.

Claimants' Motion for Partial Summary Judgment Against Respondent Merrill, Lynch, Pierce, Fenner & Smith Pursuant to Texas Securities Act §33A(2) filed: May 5, 2003.

Respondent Merrill Lynch's Response to Claimants' Motion for Partial Summary Judgment filed: June 17, 2003.

Claimants' Reply and Supplement to Motion for Partial Summary Judgment Against Respondent Merrill, Lynch, Pierce, Fenner & Smith Pursuant to Texas Securities Act §33A(2) filed: June 30, 2003.

Respondent Merrill Lynch's Motion for Summary Judgment filed on: October 16, 2003.

Respondent Merrill Lynch's Supplemental Memorandum in Support of Motion for Summary Judgment and Response to Claimants' Motion for Summary Judgment filed on: December 3, 2003.

Claimants' Response to Respondent Merrill Lynch's Supplemental Memorandum in Support of Motion for Summary Judgment and Response to Claimants' Motion for Summary Judgment filed on: December 9, 2003.

Claimants' Supplemental Response and Brief in Opposition to Respondent Merrill Lynch's Motions to Dismiss filed: December 9, 2003.

Claimants' Response and Brief in Opposition to Merrill Lynch's Motion for Summary Judgment filed: December 9, 2003.

Claimants' Response and Brief in Opposition to Respondent Raj's Motions to Dismiss, for Summary Judgment and to Strike Certain Exhibits filed: December 9, 2003.

Claimants' Brief in Support of Claimants' Motion for Partial Summary Judgment pursuant to Texas Securities Act §33a(2) filed: December 9, 2003.

Respondent Melnick's Amended Motion to Dismiss and Statement of Answer filed: October 2, 2003.

Respondent Melnick's Supplemental Memorandum in Support of Motion to Dismiss filed: November 21, 2003.

Respondent Raj's Memorandum in Further Support of His Motion to Dismiss and for Summary Judgment, and, In the Alternative, Motion to Stay, as well as Motion to Strike Certain Exhibits filed: November 21, 2003.

Respondent Raj's Letter in Further Support of His Memorandum in Further Support of His Motion to Dismiss and for Summary Judgment, and, In the Alternative, Motion to Stay, as well as Motion to Strike Certain Exhibits filed: November 26, 2003.

Respondent Merrill Lynch's Reply to Claimants' Supplemental Response and Brief filed on: January 20, 2004.

Claimant's Supplemental Facts and Authorities filed on: February 4, 2004.

Claimant's Second Supplemental Facts and Authorities filed on: February 12, 2004

Respondent Merrill Lynch's Motion for Summary Judgment filed: March 29, 2004.

Stipulation of Dismissal for Respondent Melnick filed: December 17, 2003.

Stipulation of Dismissal for Respondent Raj filed: December 18, 2003.

Claimants' Motion to Temporarily Inactivate Case filed: July 15, 2004.

Respondent Merrill Lynch's Response to Claimant's Motion to Temporarily Inactivate Case filed: July 16, 2004.

Claimants' Withdrawal of Claims against Respondents Merrill Lynch and Komansky filed: November 12, 2004.

Respondent Raj's Motion for Expungement filed: November 21, 2003.

Respondent Raj's Supplemental Motion for Expungement filed: August 10, 2004.

Respondent Melnick's Motion for Expungement filed: August 17, 2004.

Respondent Komansky's Renewed Request to Expunge filed: November 16, 2004.

Respondent Raj's Renewed Supplemental Motion to Expunge filed: November 16, 2004.

Respondent Melnick's Renewed Motion to Expunge filed: December 1, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: violation of the Texas Deceptive Trade Practices-Consumer Protection Act; negligent misrepresentation; breach of the implied representation of fair dealing and full disclosure; breach of fiduciary duty; violation of Texas Securities Act §33A(2); violations of Texas Business and Commerce Code, §27.01, Fraud in Real Estate and Stock Transactions; violation of the NASD Business Conduct Rule 2210-Standards of Commercial Honor and Principles of Trade; violations of the NASD Business Conduct Rule 2120-Use of Manipulative, Deceptive or Other Fraudulent Devices; violation of NASD Business Conduct Rule 2310-Recommendations to Customers (Suitability); violations of NASD Business Conduct Rule 2310-2 – Fair dealings with Customers; civil conspiracy; aiding and abetting; violations of Section 10(b) of the Securities Exchange Act and Rule 10B-5; and, control person liability for the individual Respondents pursuant to Section 20(A) of the exchange Act. These causes of action related to various stock recommendations made by the Merrill Lynch research analysts that were allegedly tainted by a desire to aid Merrill Lynch's investment banking business.

Unless specifically admitted in their Answer, Respondents Merrill Lynch and Komansky denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants fail to state a claim for which relief may be granted and their claims should be dismissed;
2. Claimants are sophisticated investors with significant resources and their allegations are an effort to avoid responsibility for their own investment decisions;
3. Claimants' assertion that Merrill Lynch's research was false or misleading is insufficient as a matter of law because Claimants have failed to specify any material misrepresentations or omissions of fact by Merrill Lynch;
4. Claimants' allegations fail to state a claim for relief under the Texas Deceptive Trade practices Act; and,
5. Waiver, estoppel, ratification, assumption of risk and comparative negligence, as well as Claimants' own failure to mitigate alleged damages bar claimants' claims.

Unless specifically admitted in his Answer, Respondent Raj denied the allegations made in the

Statement of Claim and asserted the following defenses:

1. Claimants fail to state a claim against Respondent Raj for which any relief can be granted;
2. Claimants suffered no damages by reason of the acts complained of in the Statement of Claim;
3. Respondent Raj is not liable to Claimants in any amount because, at all times relevant herein, Raj acted properly and in good faith and had no involvement with respect to Claimants' accounts;
4. Respondent Raj acted in good faith and did not directly or indirectly induce any act or acts constituting a violation of the federal securities laws;
5. Claimants' claims are barred because the risks inherent in the investments at issue were fully disclosed and/or known to Claimants and they assumed those risks. Moreover, any alleged losses incurred by Claimants were the direct result of adverse market conditions and/or the acts of the issuer of the securities at issue and cannot be attributed to Raj;
6. Claimants' claims are barred by applicable statutes of limitation and/or the doctrines of laches, estoppel, waiver and ratification because, among other things, Claimants did not timely raise objections or complaints when they received trade confirmations, account statements, and other account information;
7. Claimants' claims are barred under the doctrine of contributory negligence because they negligently contributed to their own injury;
8. Claimants' claims are barred or mitigated under the doctrine of comparative negligence because they negligently contributed to their own injury to a greater degree than Raj allegedly did;
9. Claimants' claims are barred because their alleged injuries were not caused, legally, proximately, or otherwise, by Raj or by the alleged misconduct pleaded in the Statement of Claim;
10. Claimants' claims are barred because Respondent Raj did not act with intent, scienter, or in breach of any duty of care or loyalty owed to Claimants;
11. Claimants' claims are barred because they failed to mitigate damages;
12. Claimants' claims are barred because Raj at all times conducted himself in compliance with the requirements of all applicable provisions of federal and state law;
13. Claimants' claims are barred because Claimants failed to exercise care and due diligence over the investments in their securities accounts;
14. Claimants are not entitled to, and fail to state a claim for, actual damages, exemplary damages, punitive damages, prejudgment interest, attorneys' fees and costs; and,
15. As applicable, the defenses asserted by Respondent Merrill Lynch are incorporated by reference.

Unless specifically admitted in his Answer, Respondent Melnick denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants failed to state a claim upon which relief can be granted;

2. Claimants suffered no damages by reason of the acts complained of in the Statement of Claim;
3. Melnick is not liable to Claimants in any amount because, at all times relevant herein, Melnick acted properly and in good faith;
4. Pursuant to the terms of the customer and other agreements executed by claimants, all substantive claims raised by claimants with respect to their accounts are to be determined under New York law;
5. Claimants failed to mitigate their damages, if any;
6. Claimants directed, approved and/or authorized each and every transaction for their accounts and/or ratified, accepted, acquiesced in, and confirmed in all respects such transactions. Consequently, their claims are barred by the equitable doctrines of estoppel, laches, ratification and waiver;
7. All risks inherent in the investments at issue were fully disclosed and/or known to and assumed by Claimants. Moreover, any alleged losses incurred by claimants were the direct result of adverse market conditions and/or the acts of the issuer of the securities at issue and cannot be attributed to Melnick;
8. At all relevant times, Melnick maintained an adequate and reasonable system of supervision and control over employees, acted in good faith, and did not, directly or indirectly, induce any act or acts constituting a violation or cause of action. Thus, Melnick is not subject to liability as a "control person" or under the theory of respondeat superior;
9. Claimants are not entitled to an award of attorneys' fees, punitive damages, interest, or the cost of this proceeding;
10. Claimants' allegations are barred by the governing statutes of limitations; and
11. As applicable, the defenses asserted by the other Respondents are incorporated by reference.

RELIEF REQUESTED

Claimant Dr. Azam Anwar requested:

Compensatory Damages	\$1,325,245.17
Treble Damages	\$2,650,490.34
Interest	At a legal rate
Attorneys' Fees	\$ 441,748.39
Other Costs	As determined by the Panel
Other Monetary/Non-Monetary Relief if any:	As determined by the Panel.

Claimant Lisa Bryan Anwar requested:

Compensatory Damages	\$ 518,988.55
Treble Damages	\$ 1,037,977.10
Interest	At a legal rate
Attorneys' Fees	\$ 172,996.18
Other Costs	As determined by the Panel
Other Monetary/Non-Monetary Relief if any:	As determined by the Panel.

Respondent Merrill Lynch requested that Claimants take nothing by their claims and Respondent recover its fees and expenses.

Respondent Komansky requested that the claim be dismissed and that the claims be expunged from his CRD record.

Respondent Raj requested that his Motion to Dismiss be granted and the Statement of Claim dismissed with prejudice as to Raj. In addition, Raj requested an award of his attorneys' fees and costs, and that all references to the Statement of Claim and the allegations asserted therein should be expunged from Respondents' CRD records.

Respondent Melnick requested an award in his favor dismissing the Statement of Claim with prejudice, that all references to this claim be expunged from his CRD records, and awarding Melnick such other and further relief as seemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Komansky did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

On December 17, 2003, Claimants and Respondent Melnick filed a Stipulation of Dismissal that dismissed with prejudice all claims against Melnick. Melnick remained a party in order to pursue his requests for expungement of the Claims.

On December 18, 2003, Claimants and Respondent Raj filed a Stipulation of Dismissal that dismissed with prejudice all claims against Raj. Raj remained a party in order to pursue his requests for expungement of the Claims.

At the pre-hearing held on January 22, 2004, the Panel heard argument regarding the parties' dispositive Motions. After consideration of the arguments and the pleading before them, the Panel determined on January 27, 2004 that:

1. Respondent Merrill Lynch's Motion for Summary Judgment was denied;
2. Respondent Komansky's Motion to Dismiss was denied; and
3. Claimants' Motion for Partial Summary Judgment was denied.

On August 18, 2004, the Panel denied Claimants' Motion to Temporarily Inactivate the Arbitration.

On November 12, 2004, Claimants filed a Withdrawal of all remaining claims.

On December 7, 2004, the Panel granted Respondents' Motions to Expunge.

AWARD

After considering the pleadings, the stipulations and the Claimants' withdrawal of their claims, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to the Claimants' Withdrawal of all claims against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and David H. Komansky, the claims against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and David H. Komansky are hereby dismissed with prejudice;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent David H. Komansky'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 David H. Komansky must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. Pursuant to the Stipulations of Dismissal, the claims against Respondents Raj and Melnick are dismissed with prejudice;
4. In addition, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Deepak D. Raj'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 Deepak D. Raj must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
5. Furthermore, the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Andrew Joseph Melnick'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 Melnick must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
6. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein; and,
7. Any and all relief not specifically addressed herein, including punitive or treble damages, is denied.

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 = \$ 600.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the

member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following member fees are assessed:

Member surcharge	= \$ 3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed, settled or withdrawn within three business days before the start of a scheduled hearing session:

November 15-19, 2004 withdrawal by Claimants Azam and Lisa Anwar = \$ 300.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: October 20, 2003 1 session	
January 22, 2004 1 session	
<hr/> Total Forum Fees	<hr/> = \$2,400.00

The Panel has assessed \$1,200.00 of the forum fees jointly and severally to Claimants Azam and Lisa Anwar, \$600.00 of the forum fees, jointly and severally, to Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., David H. Komansky, Deepak D. Raj and Andrew J. Melnick, and \$600.00 of the forum fees, jointly and severally, to Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and David H. Komansky.

EEE SUMMARY

Claimants Azam and Lisa Anwar are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Three Day Withdrawal Fee	= \$ 300.00
Forum Fees	= \$ 1,200.00
<hr/> Total Fees	<hr/> = \$ 2,100.00
Less payments	= \$ 1,800.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 300.00

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for:

Member Fees	= \$ 9,600.00
<u>Less payments</u>	<u>= \$ 9,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., David H. Komansky, Deepak D. Raj and Andrew J. Melnick are jointly and severally liable for:

Forum Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., and David H. Komansky are jointly and severally liable for:


Forum Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

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

ARBITRATION PANEL

Thomas Mark Zeller - Public Arbitrator, Presiding Chairperson
Thomas Everett Jaeb - Public Arbitrator
Donald Vincent Enright - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Thomas Mark Zeller
Public Arbitrator, Presiding Chairperson

12-15-04
Signature Date

Thomas Everett Jaeb
Public Arbitrator

Signature Date

Donald Vincent Enright
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

12/28/04 

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Member Fees	= \$ 9,600.00
<u>Less payments</u>	<u>= \$ 9,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., David H. Komansky, Despak D. Raj and Andrew J. Melnick are jointly and severally liable for:

Forum Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., and David H. Komansky are jointly and severally liable for:

Forum Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

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

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Thomas Everett Jacob - Public Arbitrator
Donald Vincent Enright - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas Mark Zeller
Public Arbitrator, Presiding Chairperson



Thomas Everett Jacob
Public Arbitrator

Signature Date

12.12.04

Signature Date

Donald Vincent Enright
Non-Public Arbitrator

Signature Date

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12/28/04

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Member Fees	= \$ 9,600.00
Less payments	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., David H. Komansky, Deepak D. Raj and Andrew J. Melnick are jointly and severally liable for:

Forum Fees	= \$ 600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 600.00

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., and David H. Komansky are jointly and severally liable for:

Forum Fees	= \$ 600.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 600.00

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

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Thomas Mark Zeller - Public Arbitrator, Presiding Chairperson
Thomas Everett Jacob - Public Arbitrator
Donald Vincent Enright - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Thomas Mark Zeller
Public Arbitrator, Presiding Chairperson

Signature Date

Thomas Everett Jacob
Public Arbitrator

Signature Date


Donald Vincent Enright
Non-Public Arbitrator

Dec. 27, 2004
Signature Date

Date of Service (For NASD Dispute Resolution office use only)

12/28/04 H/ku