

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

George W. Heunisch
Sophia E. Heunisch

Case Number: 03-02299

Names of the Respondents

Brian J. Kapp, the Kapp/Scanlon
Group, and Merrill Lynch, Pierce,
Fenner & Smith, Inc.

Hearing Site: Pittsburgh, PA

Nature of the Dispute: Customers vs. Associated Person, Non-Member, and Member

REPRESENTATION OF PARTIES

Claimants, George W. Heunisch and Sophia E. Heunisch, hereinafter collectively referred to as "Claimants", were represented by Robert M. Kramer, Attorney at Law, Pittsburgh, Pennsylvania.

Respondents, Brian J. Kapp ("Kapp"), the Kapp/Scanlon Group ("Kapp/Scanlon"), and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), hereinafter collectively referred to as "Respondents", were represented by Patrick R. Kingsley, Esq., Stradley, Ronon, Stevens & Young, LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on March 31, 2003.

Claimants signed the Uniform Submission Agreement on March 14, 2003.

Statement of Answer filed by Respondents on or about May 23, 2003.

Amended Statement of Answer filed by Respondents on or about August 8, 2003.

A representative of Respondent Merrill Lynch signed the Uniform Submission Agreement on August 21, 2003

Respondent Kapp signed the Uniform Submission Agreement on August 21, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: violations of the Security Act of 1933; violations of the Securities Exchange Act of 1934; violations of the Pennsylvania Securities Act; violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law; fraud; negligence; breach of fiduciary duty; breach of contract; *respondeat superior*; and, failure to supervise. The causes of action relate to the purchase and sale of various stocks and mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses among others: failure to state a claim upon which relief may be granted; estoppel; failure to mitigate; ratification and waiver; comparative and contributory negligence; and, statutes of limitation.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$ 330,331.00
Interest	6% per annum, simple
Attorneys' Fees	33% of damage award
Other Costs	amount unspecified

Respondents requested that Claimants' claims be denied and dismissed with prejudice, and that Respondents be awarded such other relief as the Arbitration Panel (the "Panel") deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about January 28, 2004, the Panel permitted Claimants to withdraw their claim against Respondent Kapp/Scanlon without prejudice.

AWARD

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

1. Claimants' claims are denied in their entirety;
2. The parties shall bear their respective costs, except as Fees are addressed below; and,
3. Any and all relief not specifically addressed herein 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 = \$ 300.00

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 person at the time of the events giving rise to the dispute.

Accordingly, Merrill Lynch is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

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 a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: January 27, 2004 1 session	
February 17, 2004 1 session	

One (1) Pre-hearing session with Panel @ \$ 1,125.00	= \$ 1,125.00
Pre-hearing conference: November 10, 2003 1 session	

Eight (8) Hearing sessions @ \$1,125.00	= \$ 9,000.00
Hearing Dates: April 26, 2004 2 sessions	
April 27, 2004 2 sessions	
April 28, 2004 2 sessions	
April 29, 2004 2 sessions	

Total Forum Fees	= \$11,025.00
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The Panel has assessed \$11,025.00 of the forum fees to Respondent Merrill Lynch.

Fee Summary

1. Claimants are assessed and shall pay:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 1,425.00
Refund owed Claimants by NASD	= \$ 1,125.00

2. Respondent Merrill Lynch is assessed and shall pay:

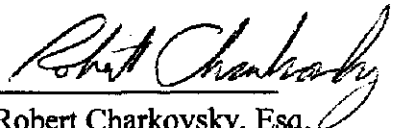
Member Fees	= \$ 5,200.00
Forum Fees	= \$11,025.00
Total Fees	= \$16,225.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$11,025.00

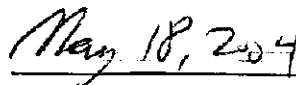
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Robert Charkovsky, Esq.	-	Public Arbitrator, Presiding Chairperson
Larry Al Feldman	-	Public Arbitrator, Panelist
Timothy Shay Davis	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures


Robert Charkovsky, Esq.
Public Arbitrator, Presiding Chairperson

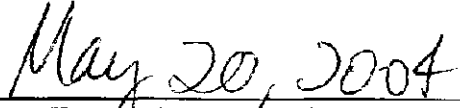

Signature Date

Larry A. Feldman
Public Arbitrator, Panelist

Signature Date

Timothy Shay Davis
Non-Public Arbitrator, Panelist

Signature Date


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

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Larry Al Feldman
Timothy Shay Davis

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Robert Charkovsky, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Larry A. Feldman
Public Arbitrator, Panelist

MAY 17th 2004

Signature Date

Timothy Shay Davis
Non-Public Arbitrator, Panelist

Signature Date

May 20, 2004

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Concurring Arbitrators' Signatures

Robert Charkovsky, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Larry A. Feldman
Public Arbitrator, Panelist

Signature Date


Timothy Shay Davis
Non-Public Arbitrator, Panelist

5-18-04
Signature Date

May 20, 2004
Date of Service (For NASD Dispute Resolution office use only)