

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimants

Azfar M. Malik and Maheen Malik,
Jointly and Individually, and for
Samir Malik Custodial Account,
Zayir Malik Custodial Account and
Areeb Malik Custodial Account

Case Number: 03-02704

Name of the Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
and Shariq Mansuri

Hearing Site: St. Louis, Missouri

NATURE OF DISPUTE

Customers vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Joseph D. Sheppard, III, Esq. of the law firm Carnahan, Evans, Cantwell & Brown, P.C., located in Springfield, Missouri represented Claimants, Azfar M. Malik and Maheen Malik ("Malik"), hereinafter referred to as "Claimants."

Bruce W. Day, Esq. of the law firm Day, Edwards, Propester & Christensen, P.C., located in Oklahoma City, Oklahoma filed an appearance on behalf of Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Shariq Mansuri ("Mansuri"), hereinafter collectively referred to as "Respondents." P. David Newsome and D. Michael O'Neill appeared at the hearing on behalf of Respondents.

CASE INFORMATION

Statement of Claim filed on April 8, 2003. Claimants, Azfar M. Malik and Maheen Malik, jointly signed the Uniform Submission Agreement on March 31, 2003.

Statement of Answer jointly filed by Respondents, Merrill Lynch and Mansuri, on June 25, 2003. Respondent Merrill Lynch signed the Uniform Submission Agreement on May 16, 2003. Respondent Mansuri signed the Uniform Submission Agreement on May 23, 2003.

Claimants filed a Motion to Amend Statement of Claim and Amended Statement of Claim on December 5, 2003. Respondents did not file a response to the Amended Statement of Claim.

A Voluntary Dismissal of Portions of Claimants' Amended Statement of Claim was filed on September 2, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, negligence, failure to supervise, breach of fiduciary duty, manipulation, misrepresentations, churning and suitability. The causes of action relate to unspecified technology and telecommunication stocks. Claimant asserted that investments made were high-risk, speculative and unsuitable to Claimant's investment needs and objectives.

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

1. Claimants fail to state a claim upon which relief can be granted.
2. Claimants' claims are barred because Merrill Lynch had a good faith basis for its research opinions.
3. Claimants' claims are barred because the risks inherent in the investments at issue were fully disclosed or known to them and they assumed those risks.
4. Claimants' claims are barred because they failed to mitigate their damages.
5. Claimants' claims are barred by the applicable statute of limitations.
6. Claimants' claims are barred because they suffered no damages by reason of the acts complained of in the Statement of Claim; Claimants' alleged damages, if any, were proximately caused by their own conduct.
7. Claimants do not have a private right of action for alleged violation of NASD rules.

RELIEF REQUESTED

Claimants requested \$4,400,000.00 in compensatory damages; punitive damages in the amount of \$15,600,000.00; interest; costs; and for other relief as the Panel deems just and proper.

Respondents, Merrill Lynch and Mansuri, requested dismissal of all claims in their entirety; expungement of any reference to this claim from Respondent Shariq Mansuri's Central Registration Depository ("CRD"); and costs and fees incurred in this matter.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing of this matter, parties notified the Panel of Claimants' dismissal of all claims against Respondent Shariq Mansuri, and provided an Agreed Stipulation executed by the parties on October 14, 2004.

At the conclusion of Claimants' case, Respondent made an oral motion for Summary Judgment. The Panel deliberated and denied the Motion. The Respondent then made an oral motion to reconsider the prior ruling and Panel denied the motion to reconsider.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Any and all claims asserted by Claimants, Azfar M. Malik and Maheen Malik, Jointly and Individually, and for Samir Malik Custodial Account, Zayir Malik Custodial Account and Areeb Malik Custodial Account, are denied.
2. Parties shall bear their own costs, including attorneys' fees, except as specified herein.
3. Any and all relief not specifically addressed herein, including punitive damages, are 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 person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch Pierce Fenner & Smith, Inc. is a party.

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

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 arbitrators, 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: May 26, 2004 1 session
May 28, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00

Pre-hearing conference: December 1, 2003 1 session

Twenty-One (22) Hearing sessions @ \$1,200.00 = \$26,400.00

Hearing Dates: October 11, 2004 2 sessions
October 12, 2004 2 sessions
October 13, 2004 2 sessions
October 14, 2004 2 sessions
October 15, 2004 2 sessions
October 18, 2004 2 sessions

October 19, 2004	3 sessions
October 20, 2004	3 sessions
October 21, 2004	2 sessions
October 22, 2004	2 sessions

Total Forum Fees = \$28,500.00

1. The Panel assessed 50% of the total forum fees in the amount of \$14,250.00 of the forum fees jointly and severally to Claimants, Azfar M. Malik and Maheen Malik.
2. The Panel assessed 50% of the total forum fees in the amount of \$14,250.00 solely to Respondent, Merrill Lynch Pierce Fenner & Smith, Inc.

FFF SUMMARY

1. Claimants, Azfar M. Malik and Maheen Malik, are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$14,250.00</u>
Total Fees	= \$14,850.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$13,050.00
2. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is solely liable for:

Member Fees	= \$10,000.00
<u>Forum Fees</u>	<u>= \$14,250.00</u>
Total Fees	= \$24,250.00
<u>Less payments</u>	<u>= \$10,000.00</u>
Balance Due NASD Dispute Resolution	= \$14,250.00

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

ARBITRATION PANEL

Robert Shiffra, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Robert G. Haddenhorst, Sr.	-	Public Arbitrator
George T. Mehan, Jr.	-	Public Arbitrator

Concurring Arbitrators' Signatures

Robert Shiffra, Esq.
Non-Public Arbitrator, Presiding Chairperson

11/4/04
Signature Date

Robert G. Haddenhorst, Sr.
Public Arbitrator

11/6/04
Signature Date

George T. Mehan, Jr.
Public Arbitrator

11/4/04
Signature Date

11/4/04
Date of Service (For NASD Dispute Resolution office use only)

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George T. Mehan, Jr.	-	Public Arbitrator

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Robert Shiffrs, Esq.
Non-Public Arbitrator, Presiding Chairperson

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Public Arbitrator

Signature Date

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Public Arbitrator

Signature Date

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George T. Mehan, Jr. - Public Arbitrator

NOV 11 2004

Concurring Arbitrators' Signatures

Robert Shiffra, Esq.
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Robert G. Haddenhorst, Sr.

Robert G. Haddenhorst, Sr.
Public Arbitrator

6 Nov 2004

Signature Date

George T. Mehan, Jr.
Public Arbitrator

Signature Date

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 Arbitration No. 03-02704
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George T. Mohan, Jr.	-	Public Arbitrator

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Signature Date


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 Public Arbitrator


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