

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Dana Hook

and

Case Number: 03-02892  
Hearing Site: Detroit, Michigan

Names of Respondents

Merrill Lynch Pierce Fenner & Smith  
and Baljinder S. Gill

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**NATURE OF CASE**

Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Dana Hook ("Claimant") was represented by Gary M. Saretsky, Esq., and Eric A. Michaels, Esq., Hertz, Schram, Saretsky, P.C., Bloomfield Hills, Michigan.

Merrill Lynch Pierce Fenner & Smith ("MLPFS") and Baljinder S. Gill ("Gil"), hereinafter referred to as "Respondents," were represented by Harold G. Ogdnelodh, Esq., Merrill Lynch Pierce Fenner & Smith, New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 21, 2003. The Submission Agreement of Claimant Dana Hook was signed on or about May 9, 2003.

Statement of Answer was filed jointly by Respondents Merrill Lynch Pierce Fenner & Smith and Baljinder S. Gill on or about October 4, 2003. The Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith was signed on or about August 1, 2003 by Robert E. Goldberg, Esq., Director and Senior Counsel. The Submission Agreement of Respondent Baljinder S. Gill was signed on or about October 16, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: unauthorized trading, overconcentration and unsuitable trades, misrepresentations/omissions, and Merrill Lynch's misconduct in connection with analysts' and brokers' recommendations and failure to supervise. The causes of action relate to Claimant's allegations that Respondents wrongfully recommended and effectuated the purchase of a number of unsuitable, risky, and aggressive mutual funds including Seligman Henderson Global Technology Fund, Van Kampen Emerging Growth Fund, and Consecro 20.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses the following: the Statement of Claim fails, in whole or in part, to state a claim upon which relief may be granted; Claimant suffered no damages because of any action by Respondents; Claimant assumed the risk of her investment decisions and therefore may not recover; Respondents did not breach any duty to Claimant imposed by operation of law or contract; and Respondents owed no fiduciary duty to Claimant.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of approximately \$250,000, plus punitive and exemplary damages, interest, costs, attorneys fees and any other relief the panel deems appropriate.

Respondents requested that the claims asserted against them be dismissed in their entirety with prejudice, and that the panel expunge this claim from Respondent Gil's permanent registration records maintained by the NASD Central Registration Depository.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Claimant and Respondents Merrill Lynch and Gill have entered into a confidential settlement agreement. In their settlement agreement, the parties agreed to present to the panel a Stipulated Award and have agreed that a single arbitrator may execute the Stipulated Award.

#### **AWARD**

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrator orders as follows:

- 1.) Claimant's claims, having been withdrawn, are dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Baljinder S. Gill's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Baljinder S. Gill must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith.

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

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$450.00 = \$ 900.00  
Pre-hearing conferences: February 16, 2004 1 session  
February 27, 2004 1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$ 1,125.00  
Pre-hearing conference: November 5, 2003 1 session

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Total Forum Fees = \$ 2,025.00

Pursuant to NASD Code of Arbitration Procedure Rule 10332(f), Dana Hook's Hearing Session Deposit of \$1,125.00 is retained by NASD. The Arbitration Panel has assessed \$675.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith. The Arbitration Panel has assessed \$675.00 of the forum to Baljinder S. Gill.

**Fee Summary**

Claimant, Dana Hook, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
<u>Total Fees</u>	<u>= \$ 1,425.00</u>
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 675.00
<u>Total Fees</u>	<u>= \$ 5,875.00</u>
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 675.00

Respondent, Baljinder S. Gill, is solely liable for:

Forum Fees	= \$ 675.00
<u>Total Fees</u>	<u>= \$ 675.00</u>
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 675.00

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

**ARBITRATOR**

Roman S. Gribbs, LL.B. – Public Arbitrator, Presiding Chair

Arbitrator's Signature:

/s/ Roman S. Gribbs, LL.B.  
Roman S. Gribbs, LL.B.  
Public Arbitrator, Presiding Chair

05/25/04  
Signature Date

05/26/04  
Date of Service (For NASD office use only)

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**Fee Summary**

Claimant, Dana Hook, is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 1,125.00</u>
Total Fees	= \$ 1,425.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 675.00</u>
Total Fees	= \$ 5,875.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 675.00

Respondent, Ballinder S. Gill, is solely liable for:


<u>Forum Fees</u>	<u>= \$ 675.00</u>
Total Fees	= \$ 675.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 675.00

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

**ARBITRATOR**

Roman S. Gibbs, LL.B. - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

  
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Roman S. Gibbs, LL.B.  
Public Arbitrator, Presiding Chair

5-25-04  
Signature Date

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Date of Service (For NASD office use only)