

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

Marion G. and Sharron Spencer

vs.

Case Number: 03-02982
Hearing Site: Dallas, Texas

Names of the Respondents

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

NATURE OF THE DISPUTE

Customers vs. Member and Associated Persons

REPRESENTATION OF PARTIES

Marion G. and Sharron Spencer, hereinafter collectively referred to as "Claimants," were represented by Jakes Jordaan, Esq., Jordaan & Riley, PLLC, Dallas, Texas.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and David H. Komansky ("Komansky") were represented by Joel R. Sharp, Esq., Jenkins & Gilchrist, Dallas, Texas.

Deepak D. Raj ("Raj") was represented by Karyn A. Thwaites, Esq., Schulte Roth & Zabel, LLP, New York, New York.

Andrew J. Melnick ("Melnick") was represented by Adam Weiss, Esq., Dickstein Shapiro LLP, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about April 23, 2003. The Submission Agreement of Claimants was signed on or about March 26, 2003.

A Statement of Answer was filed by Respondent Merrill Lynch on or about July 20, 2003. The Submission Agreement of Respondent Merrill Lynch was signed on or about June 6, 2003.

A Motion to Dismiss was filed by Respondent Komansky on or about June 20, 2003. Respondent Komansky did not file an executed Uniform Submission Agreement.

A Statement of Answer and Motion to Dismiss was filed by Respondent Raj on or about June 20, 2003. The Submission Agreement of Respondent Raj was signed on or about August 1, 2003.

A Statement of Answer and Motion to Dismiss of Respondent Melnick was filed on or about June 20, 2003. The Submission Agreement of Respondent Melnick was signed on or about June 19, 2003.

A Motion for Summary Judgment was filed by Respondent Merrill Lynch on or about March 22, 2004.

A Stipulation of Dismissal of Respondent Raj was filed by Claimants on or about December 18, 2003.

A Stipulation of Dismissal of Respondent Melnick was filed by Claimants on or about December 12, 2003.

A Motion for Expungement was filed by Respondent Raj on or about January 30, 2004.

A Motion for Expungement was filed by Respondent Melnick on or about April 2, 2004.

The Request to Inactivate the Case was filed by Claimants' on or about July 15, 2004.

The Withdrawal of the Claim was filed by Claimants on or about December 3, 2004.

A Renewed Unopposed Motion for Expungement was filed by Respondent Melnick on or about August 9, 2006.

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 of 1934 and Rule 10b-5; and control person liability for the individual Respondents pursuant to Section 20(A) of the Securities Exchange Act. These causes of action related to various stock

recommendations made by the Merrill Lynch research analysts. Claimants alleged these recommendations were tainted by a desire to aid Merrill Lynch's investment banking business.

Unless specifically admitted in its Answer, Respondent Merrill Lynch denied the allegations made in the Statement of Claim and asserted the following defenses, including the following: Claimants failed to state a claim for which relief may be granted and their claims should be dismissed; Claimants are sophisticated investors with significant resources and their allegations are an effort to avoid responsibility for their own investment decisions; 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; Claimants' allegations failed to state a claim for relief under the Texas Deceptive Trade Practices Act; and, Claimants' claims are barred by waiver, estoppel, ratification, assumption of risk and comparative negligence, as well as Claimants own failure to mitigate alleged damages.

Unless specifically admitted in his Answer, Respondent Raj denied the allegations made in the Statement of Claim and asserted the following defenses, including the following: Claimants fail to state a claim against Respondent Raj for which any relief can be granted; Claimants suffered no damages by reason of the acts complained of in the Statement of Claim; 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; 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; 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; 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; 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; Claimants' claims are barred under the doctrine of contributory negligence because they negligently contributed to their own injury; 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; 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; 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; Claimants' claims are barred because they failed to mitigate damages; 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; Claimants' claims are barred because Claimants failed to exercise care and due diligence over the investments in their securities accounts; Claimants are not entitled to, and failed to state a claim for, actual damages, exemplary damages,

punitive damages, prejudgment interest, attorneys' fees and costs; and 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, including the following: Claimants failed to state a claim upon which relief can be granted; Claimants suffered no damages by reason of the acts complained of in the Statement of Claim; Melnick is not liable to Claimants in any amount because, at all times relevant herein, Melnick acted properly and in good faith; pursuant to the terms of the customer and other agreements executed by claimant, all substantive claims raised by Claimants with respect to their accounts are to be determined under New York law; Claimants failed to mitigate their damages, if any; 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; 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; 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; Claimants are not entitled to an award of attorneys' fees, punitive damages, interest, or the cost of this proceeding; Claimants' allegations are barred by the governing statutes of limitations; and as applicable, the defenses asserted by the other Respondents are incorporated by reference.

RELIEF REQUESTED

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$ 510,597.84
Exemplary/Punitive Damages	\$1,021,195.68
Interest	\$ 127,644.14
Attorneys' Fees	\$ 170,199.28
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent Merrill Lynch requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Respondent Komansky requested that the claims asserted against him be denied in their entirety.

Respondent Raj requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees. Respondent Raj

requested all references to the Statement of Claim and the allegations asserted therein should be expunged from his CRD records.

Respondent Melnick requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees. Respondent Melnick requested all references to the Statement of Claim and the allegations asserted therein should be expunged from his CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent David H. Komansky did not file with the NASD Dispute Resolution a properly executed Uniform Submission Agreement 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 September 14, 2006, the Panel determined that the Motions to Expunge filed by Respondents Deepak D. Raj and Andrew Melnick would be granted.

AWARD

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

1. Pursuant to Claimants' Withdrawal of Claims filed December 3, 2004, the claims against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and David H. Komansky are hereby dismissed with prejudice;
2. Pursuant to the Stipulations of Dismissal, the claims against Respondents Deepak D. Raj and Andrew Melnick are dismissed with prejudice;
3. 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;
4. 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 Andrew Joseph Melnick must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

5. Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and,
6. Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 500.00

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

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted of each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$ 1,200.00
Pre-hearing conference: December 22, 2003 1 session	
Total Forum Fees	= \$ 1,200.00

The Panel has assessed \$600.00 of the forum fees jointly and severally to Marion G. and Sharron Spencer.

The Panel has assessed \$600.00 of the forum fees to Merrill Lynch, Pierce, Fenner & Smith, Inc.

FEE SUMMARY

Claimants, Marion G. and Sharron Spencer, are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 1,100.00
Less payments	= \$ 1,700.00
Refund Due Claimants	= \$ 600.00

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

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 9,150.00
Less payments	= \$ 8,550.00
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.

ARBITRATION PANEL

Michael P. Geary - Public Arbitrator, Presiding Chairperson
Timothy P. Clifford - Public Arbitrator
R. Dan Mitchell - Non-Public Arbitrator

Concurring Arbitrators' Signature

Michael P. Geary
Public Arbitrator, Presiding Chairperson

Signature Date

Timothy P. Clifford
Public Arbitrator

Signature Date

R. Dan Mitchell
Non-Public Arbitrator

Signature Date

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

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Timothy P. Clifford - Public Arbitrator

R. Dan Mitchell - Non-Public Arbitrator

Concurring Arbitrators' Signature

Michael P. Geary
Public Arbitrator, Presiding Chairperson

10/2/06

Signature Date

Timothy P. Clifford
Public Arbitrator

Signature Date

R. Dan Mitchell
Non-Public Arbitrator

Signature Date

11/6/06 *Mar*

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NASD Dispute Resolution

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Timothy P. Clifford - Public Arbitrator

R. Dan Mitchell - Non-Public Arbitrator

Concurring Arbitrators' Signature

Michael P. Geary
Public Arbitrator, Presiding Chairperson

Signature Date

Timothy P. Clifford
Public Arbitrator

Signature Date

R. Dan Mitchell
R. Dan Mitchell
Non-Public Arbitrator

9/28/06
Signature Date

11/6/06 M/G
Date of Service (For NASD Dispute Resolution office use only)