

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Names of Claimants

Kim and Richard Chesbrough

and

Case Number: 03-03644  
Hearing Site: Detroit, Michigan

Names of Respondents

Merrill Lynch Pierce Fenner & Smith  
and Kenneth Scott Jones

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**NATURE OF CASE**

Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Kim and Richard Chesbrough ("Claimants") were represented by Lawrence M. Elkus, Esq., Farmington Hills, Michigan, and Stuart Berkowitz, Esq., St. Louis, Missouri.

Merrill Lynch Pierce Fenner & Smith ("MLPFS") and Kenneth Scott Jones ("Jones") were represented by W. Scott Turnbull, Esq., Miller Canfield Paddock and Stone, P.L.C., Detroit, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 19, 2003. Claimants' Amendment to Statement of Claim was submitted on or about June 5, 2003. The Submission Agreement of Claimants Kim and Richard Chesbrough was signed on or about May 12, 2003.

Statement of Answer to Claimants' Amended Statement of Claim was filed jointly by Respondents MPFS and Jones on or about July 28, 2003. The Submission Agreement of Respondent Kenneth Scott Jones was signed on or about October 8, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: negligence; fraud; breach of fiduciary duty; misrepresentation, negligent misrepresentation and silent fraud; breach of the Michigan Consumer's Protection Act; and breach of contract. The causes of action related to Claimants' allegations that Respondents failed to honor Claimants' requested

15% stop loss order on their portfolio. Claimants' portfolio consisted of various internet stocks, including: Amazon.com, AOL, Yahoo, Excite and Ariba, which stocks Claimants alleged were recommended by Respondents.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim and all claims therein fail to state a claim upon which relief can be granted, the Statement of Claim and all claims therein are barred by reason of the applicable statute of limitations or other period of limitations, and; the Statement of Claim and all claims therein are barred by reason of Claimants' negligence, comparative negligence and contributory negligence.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$999,999.00 in compensatory damages, plus return of commissions, interest, costs, attorney fees, exemplary damages, and other relief the panel deems just and equitable.

Respondents requested that the claims asserted against them be dismissed in their entirety, that the panel recommend expungement of this matter from Respondent Jones' CRD record, and that Respondents be awarded their costs and attorneys' fees.

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

Respondent Merrill Lynch Pierce Fenner & Smith did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The parties advised the panel at hearing that they had reached a settlement in this matter and agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

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

- 1.) Claimants' claims, having been withdrawn, are dismissed with prejudice;

- 2.) That 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 Kenneth Scott Jones' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Kenneth Scott Jones must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 5.) 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 = \$ 375.00

#### **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 = \$ 2,250.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 4,000.00

#### **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:

One (1) Hearing session x \$1,200.00 = \$ 1,200.00  
Hearing Date: May 11, 2004 1 session  
Total Forum Fees = \$ 1,200.00

Pursuant to the parties' agreement, the Arbitration Panel has assessed \$1,200.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith.

**Fee Summary**

Claimants, Kim and Richard Chesbrough, are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 1,575.00
Balance Refunded by NASD Dispute Resolution	= \$ 1,200.00

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

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 8,200.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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

**ARBITRATION PANEL**

Paul M. Stoychoff, Esq. - Public Arbitrator, Presiding Chair  
Frederick F. Fordon - Public Arbitrator  
Norman A. Samson - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Paul M. Stoychoff, Esq.  
Paul M. Stoychoff, Esq.  
Public Arbitrator, Presiding Chair

06/25/04  
Signature Date

/s/ Frederick F. Fordon  
Frederick F. Fordon  
Public Arbitrator

06/28/04  
Signature Date

/s/ Norman A. Samson  
Norman A. Samson  
Non-Public Arbitrator

06/24/04  
Signature Date

06/30/04  
Date of Service (For NASD office use only)

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NASD Dispute Resolution  
 Arbitration No. 03103544  
 Award Page 4 of 4

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 Public Arbitrator, Presiding Chair

6/25/04  
 Signature Date

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 Public Arbitrator

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