

---

**Award**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Name of the Claimant

Lorna A. Wiley

Case Number: 03-03977

Names of the Respondents

Merrill Lynch

Rafal R. Baranski

Hearing Site: Tampa, Florida

---

Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Lorna A. Wiley ("Wiley"), hereinafter referred to as "Claimant": James R. Hooper, Esq., Hooper & Weiss, LLC, Orlando, Florida.

For Merrill Lynch ("Merrill") and Rafal R. Baranski ("Baranski"), hereinafter collectively referred to as "Respondents": Neal S. Baritz, Esq., Baritz & Colman LLP, Boca Raton, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: June 11, 2003.

Claimant signed the Uniform Submission Agreement: April 1, 2003.

Statement of Answer filed by Respondents on or about: July 31, 2003.

Respondent Merrill signed the Uniform Submission Agreement: July 7, 2003.

Respondent Baranski signed the Uniform Submission Agreement: July 25, 2003.

**CASE SUMMARY**

Claimant alleged the following causes of action: unsuitability; negligence; breach of contract; breach of fiduciary duty; respondeat superior; violation of NASD Conduct Rule 2110; failure to supervise; and omissions/misrepresentations. The causes of action relate to Claimant's investments in shares of stock, including, but not limited to the following: Ask Jeeves Inc., Broadvision Inc., Intel Corp., Kana Communications Inc., Nokia Corp., Ticketmaster Online, Cisco Systems, Sun Microsystems, Lucent Technologies, Verizon Communications, Exodus Communications, AT&T, Ariba Inc., B2B Internet HLDR, Corning Inc., Ciena Corp., and PMC Sierra Inc.

Unless specifically admitted in their Answer, Respondents Merrill and Baranski denied the allegations made in the Statement of Claim and asserted various defenses.

**RELIEF REQUESTED**

Claimant requested an award of compensatory damages in their favor and against Respondents jointly and severally in the amount of \$465,091.31; punitive damages; attorney's fees; costs, and any other remedy deemed just and equitable.

Respondents requested a dismissal of this action in its entirety, together with a determination that Respondents are the prevailing parties in this action and with particular regard to Respondent Baranski, a further order directing the expungement of this action from the records maintained by the Central Registration Depository, plus all costs incurred in connection with the defense of this matter.

**OTHER ISSUES CONSIDERED AND DECIDED**

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 (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

On Claimant's Statement of Claim, the Panel finds against Claimant and in favor of Respondents.

Each party shall bear their respective costs and fees.

Respondent Baranski's request for expungement is denied.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

**FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

**Filing Fees**

NASD 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, Respondent Merrill is a member firm and a party.

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

Hearing process fee	= \$2,750.00
Total Member Fees	= \$5,200.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

Three-day cancellation fees were not assessed in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. 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:

Two (2) Pre-hearing sessions with the Panel @ \$1,125.00 per session	= \$2,250.00
Pre-hearing conferences:	
November 25, 2003	1 session
October 26, 2004	1 session
Four (4) Hearing sessions @ \$1,125.00 per session	= \$4,500.00
Hearing Dates:	
December 6, 2004	2 sessions
December 7, 2004	2 sessions
<hr/>	
Total Forum Fees	= \$6,750.00

The Panel has assessed forum fees in the amount of \$3,375.00 to Claimant.

The Panel has assessed forum fees in the amount of \$3,375.00 to Respondents, jointly and severally.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$3,375.00
Total Fees	= \$3,675.00
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$2,250.00

Respondent Merrill is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$3,375.00
Total Fees	= \$3,375.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,375.00

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

**ARBITRATION PANEL**

James R. Kennedy, Jr.	-	Public Arbitrator, Presiding Chairperson
Richard Hoffman	-	Public Arbitrator
Robert Hagemeyer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
James R. Kennedy, Jr.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

NASD Dispute Resolution

Arbitration No. 03-3977

Award Page 5

\_\_\_\_\_/S/\_\_\_\_\_  
Richard Hoffman

Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_/S/\_\_\_\_\_  
Robert Hagemeyer

Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

12-15-04

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

**NASD Dispute Resolution**  
**Arbitration No. 03-3977**  
**Award Page 4**

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$3,375.00
Total Fees	= \$3,675.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$2,250.00

Respondent Merrill is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$3,375.00
Total Fees	= \$3,375.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,375.00


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

**ARBITRATION PANEL**

James R. Kennedy, Jr.  
 Richard Hoffman  
 Robert Hagemeyer


Public Arbitrator, Presiding Chairperson  
 Public Arbitrator  
 Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
 James R. Kennedy, Jr.  
 Public Arbitrator, Presiding Chairperson

12-15-04  
 Signature Date

NASD Dispute Resolution  
Arbitration No. 03-1977  
Award Page 5

  
Richard Hoffman  
Public Arbitrator

12/15/04  
Signature Date

Robert Hagmeyer  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

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

NASD Dispute Resolution  
Arbitration No. 03-3977  
Award Page 5

Richard Hoffman  
Public Arbitrator

Signature Date

Robert Hagemeyer  
Non-Public Arbitrator

Dec 15, 2004  
Signature Date

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