

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

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**In the Matter of the Arbitration Between:**

**Wallace Watkins Lane Trust, Claimant v. Rick G. Handy and Merrill Lynch, Pierce, Fenner & Smith Inc., Respondents**

**Case Number: 03-03990**

**Hearing Site: Honolulu, Hawaii**

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

**REPRESENTATION OF PARTIES**

**For Claimant:**

Melvin Wong, Esq.  
Melvin Y.Q. Wong, Attorney at Law  
Honolulu, Hawaii

**For Respondents:**

Lawrence Brennan, Esq.  
Bingham McCutchen, LLP  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: May 27, 2003

Claimant's Uniform Submission Agreement signed: May 24, 2003

Joint Statement of Answer filed by Respondents Rick G. Handy and Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"): September 29, 2003

Respondent Merrill Lynch's Uniform Submission Agreement signed: August 22, 2003

Respondent Rick G. Handy's Uniform Submission Agreement signed: September 29, 2003

### **CASE SUMMARY**

Claimant alleged that investments made in his account were overly concentrated in various unspecified technology companies. Claimant also alleged breach of fiduciary duty, negligence, unauthorized trading, misrepresentations, unsuitable recommendations and failure to supervise in connection with investments made in Claimant's account.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$2,150,000.00, punitive damages of 6,000,000.00, interest of \$389,000.00, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of this matter from Rick G. Handy's NASD Central Registration Depository records and assessment of forum fees against Claimant.

### **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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims by Claimant, including the claim for punitive damages, are dismissed.
- 2) The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Rick G. Handy's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Rick G. Handy must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 600.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch is a party and the following fees are assessed:

Member Surcharge	= \$ 3,350.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 9,600.00</b>

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: December 11, 2003 1 session	

(5) Hearing sessions @ \$1,200.00/session	= \$6,000.00
Hearing: August 9, 2004 2 sessions	
August 10, 2004 2 sessions	
August 11, 2004 1 session	

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<b>Total Forum Fees</b>	<b>= \$7,200.00</b>
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The Panel assessed \$3,600.00 in forum fees to Claimant.

The Panel assessed \$3,600.00 in forum fees to Respondent Merrill Lynch.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 3,600.00
Total Fees	= \$ 4,200.00
<u>Less Payments</u>	= \$( 1,800.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,400.00</b>

2. Respondent Merrill Lynch is charged with the following fees and costs:

Member Fees	= \$ 9,600.00
<u>Forum Fees</u>	= \$ 3,600.00
Total Fees	= \$ 13,200.00
<u>Less Payments</u>	= \$(15,600.00)
<b>Refund Due Merrill Lynch</b>	<b>= \$( 2,400.00)</b>

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

**ARBITRATION PANEL**

Ronald I. Heller, Esq.	-	Public Arbitrator, Presiding Chair
Thomas Y. Higashi, Esq.	-	Public Arbitrator
Robert Shiffra, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Ronald I. Heller, Esq.  
Chair, Public Arbitrator

8/16/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Thomas Y. Higashi, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Robert Shiffra, Esq.  
Non-Public Arbitrator

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

August 18, 2004  
\_\_\_\_\_  
Date of Service

State of HAWAII ss:

City and County of Honolulu

On this 16<sup>th</sup> day of August 2004, before me personally appeared Ronald I. Heller to me known and known before me to be the individual described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.

  
\_\_\_\_\_  
C.C. DECOSTA  
Notary Public, State of HAWAII  
My commission expires: 6/26/2008

**ARBITRATION PANEL**

Ronald L. Heller, Esq.	-	Public Arbitrator, Presiding Chair
Thomas Y. Higashi, Esq.	-	Public Arbitrator
Robert Shiffra, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Ronald L. Heller, Esq.  
Chair, Public Arbitrator

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

Thomas Y. Higashi  
\_\_\_\_\_  
Thomas Y. Higashi, Esq.  
Public Arbitrator

8/17/04  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Robert Shiffra, Esq.  
Non-Public Arbitrator

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

August 18, 2004  
\_\_\_\_\_  
Date of Service

State of Oregon ss:

City and County of Marion

On this 17 day of August 2004, before me personally appeared Thomas Higashi to me known and known before me to be the individual described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.

Traci Banick  
\_\_\_\_\_  
Notary Public

My commission expires: Dec. 10, 2007



**ARBITRATION PANEL**

Ronald I. Heller, Esq.  
Thomas Y. Higashi, Esq.  
Robert Shiffra, Esq.

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Ronald I. Heller, Esq.  
Chair, Public Arbitrator

Signature Date

Thomas Y. Higashi, Esq.  
Public Arbitrator

Signature Date

Robert Shiffra, Esq.  
Non-Public Arbitrator

Signature Date

August 18, 2004  
Date of Service

State of OHIO ss:

City and County of CLEVELAND, CUYAHOGA

On this 18<sup>TH</sup> day of AUGUST 2004, before me personally appeared ROBERT SHIFFRA to me known and known before me to be the individual described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.

Nick Georgopoulos  
Notary Public  
My Commission expires: \_\_\_\_\_

**NICK GEORGOPOULOS**  
NOTARY PUBLIC, STATE OF OHIO  
Recorded in Cuyahoga County  
My Comm. Expires May 10, 2007

