

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

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In the Matter of the Arbitration Between:

Belachew Telahun Trustee, Telahun Family Trust and Belachew Telahun, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Aria Ghajar, Larry P. Smith, Jr., Julie M. Ghajar, Gaylord W. Galiher, Michael E. Kleinsmith and Patricia G. Williams, Respondents

Case Number: 03-04255

Hearing Site: San Francisco, California

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Nature of the Dispute: Customers vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimants:

Richard Sacks  
Timothy A. Canning, Esq.  
Novato, California

For Respondents:

Eric J. Glassman, Esq.  
Kenneth Mennemeier, Esq.  
Mennemeier, Glassman & Stroud  
Sacramento, California

**CASE INFORMATION**

Statement of Claim filed: June 10, 2003

Claimants' Arbitration Brief filed: April 29, 2005

Claimants' Uniform Submission Agreement signed: May 16, 2003

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Gaylord W. Galiher, Michael E. Kleinsmith, Patricia G. Williams and Larry P. Smith, Jr.: August 29, 2003

Respondents Aria Ghajar and Julie M. Ghajar's (also known as Julia Ghajar) Joinder in Answer to Statement of Claim filed: September 3, 2003

Respondents' Hearing Brief filed: April 29, 2005

Respondent Merrill Lynch's Uniform Submission Agreement signed: July 25, 2003

Respondent Gaylord W. Galiher's Uniform Submission Agreement signed: September 25, 2003

Respondent Michael E. Kleinsmith's Uniform Submission Agreement signed: September 25, 2003

Respondent Patricia G. Williams' Uniform Submission Agreement signed: September 24, 2003

Respondent Larry P. Smith, Jr.'s Uniform Submission Agreement signed: September 25, 2003

Respondent Aria Ghajar's Uniform Submission Agreement signed: September 25, 2003

Respondent Julie M. Ghajar's Uniform Submission Agreement signed: September 26, 2003

### **CASE SUMMARY**

Claimants alleged the following claims with respect to investments in various technology companies, including but not limited to investments in Cisco Systems, Intel and Sun Micro Systems: 1) Fraud; 2) Negligence; 3) Breach of Contract; and 4) Breach of Fiduciary Duty.

Respondents denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondents also asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested:

1. Damages estimated at \$3,300,000.00 or that amount proven at hearing;
2. Pre-award interest at the legal rate;
3. Reimbursement for the reasonable costs in the prosecution of this claim; and
4. Punitive and exemplary damages.

Respondents requested:

1. That Claimants' Statement of Claim be dismissed;
2. An award in Respondents' favor;
3. That the Panel expunge any reference to this matter from the regulatory records of the registered persons;
4. Attorneys' fees and costs; and
5. Such other and further relief as is deemed just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On July 3, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On or about June 25, 2004, Claimants dismissed all claims against Respondents Patricia G. Williams, Larry P. Smith, Jr. and Gaylord W. Galiher.

At hearing, the Panel granted Respondents' Motion to Exclude the Dinallo Affidavit and NASD Letter of Acceptances and determined that such documents were irrelevant and immaterial in this matter.

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 Claimants against Respondents Aria Ghajar, Michael E. Kleinsmith and Julie M. Ghajar are dismissed.
- 2) Respondent Merrill Lynch is solely liable to and shall pay Claimants the sum of \$35,000.00.
- 3) Claimants' claims for punitive and exemplary damages are denied.
- 4) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Aria Ghajar's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Aria Ghajar must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

- 5) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Gaylord W. Galiher's registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Gaylord W. Galiher must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 6) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Patricia G. Williams' registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Patricia G. Williams must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 7) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Larry P. Smith, Jr.'s registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Larry P. Smith, Jr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 8) Each party shall bear its own costs, including attorney's fees.
- 9) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR 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, Merrill Lynch is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

**Adjournment Fees**

The following adjournment fees are assessed:

The Panel determined that the parties shall split the adjournment fee in connection with the adjourned dates of July 13-15 and July 19, 2004, and assessed the \$1,200.00 adjournment fee as follows: 50% jointly and severally to Claimants; and 50% jointly and severally to Respondents Merrill Lynch, Aria Ghajar, Michael E. Kleinsmith and Julie M. Ghajar.

**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:

(3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	=	\$3,600.00
Pre-hearing conferences:		
November 25, 2003	1 session	
October 13, 2004	1 session	
May 12, 2005	1 session	

(10) Hearing sessions @ \$1,200.00/session	=	\$12,000.00
Hearings:		
May 16, 2005	2 sessions	
May 17, 2005	2 sessions	
May 18, 2005	2 sessions	
May 19, 2005	2 sessions	
May 20, 2005	2 sessions	

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<b>Total Forum Fees</b>	<b>=</b>	<b>\$15,600.00</b>
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The Panel assessed \$1,560.00 of the forum fees to Claimants.

The Panel assessed \$14,040.00 of the forum fees to Respondent Merrill Lynch.

**Fee Summary**

1. Claimants are charged with the following fees and costs:

Initial Filing Fee	= \$	600.00
Adjournment Fee	= \$	600.00
Forum Fees	= \$	1,560.00
Total Fees	= \$	2,760.00
Less Payments	= \$(	1,800.00)
Balance Due NASD-DR	= \$	960.00

2. Respondents Merrill Lynch, Aria Ghajar, Michael E. Kleinsmith and Julie M. Ghajar are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 600.00
<u>Less Payments</u>	<u>= \$( 600.00)</u>
Balance Due NASD-DR	= \$ 0.00

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

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$ 14,040.00</u>
Total Fees	= \$ 22,590.00
<u>Less Payments</u>	<u>= \$( 13,550.00)</u>
Balance Due NASD-DR	= \$ 9,040.00

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

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**ARBITRATION PANEL**

Bruce T. Mitchell, Esq.	-	Public Arbitrator, Presiding Chair
Fred D. Butler, J.D.	-	Public Arbitrator
Eva L. Levine, J.D.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Bruce T. Mitchell, Esq.  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Fred D. Butler, J.D.  
Public Arbitrator

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

\_\_\_\_\_  
Eva L. Levine, J.D.  
Non-Public Arbitrator

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

6/01/05  
Date of Service

**ARBITRATION PANEL**

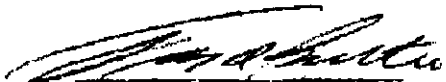
Bruce T. Mitchell, Esq.  
Fred D. Butler, J.D.  
Eva L. Levine, J.D.

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Bruce T. Mitchell, Esq.  
Chair, Public Arbitrator

Signature Date



Fred D. Butler, J.D.  
Public Arbitrator

5/29/05  
Signature Date

Eva L. Levine, J.D.  
Non-Public Arbitrator

Signature Date

6/01/05  
Date of Service



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Bruce T. Mitchell, Esq.  
Fred D. Butler, J.D.  
Eva L. Levine, J.D.

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

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Chair, Public Arbitrator

Signature Date

Fred D. Butler, J.D.  
Public Arbitrator

Signature Date



Eva L. Levine, J.D.  
Non-Public Arbitrator

5-26-2005

Signature Date

6/01/05

Date of Service