

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

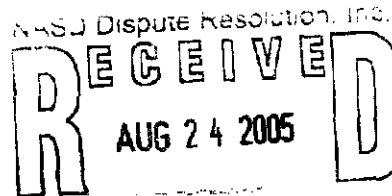
Name of Claimant

Hugh and Sandra Gallagher

and

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Colin Hoehn



03-04778
Chicago, Illinois

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

REPRESENTATION OF PARTIES

Hugh and Sandra Gallagher ("Claimants") were represented by Andrew J. Stoltmann, Esq., Stoltmann Law Offices, Chicago, Illinois.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Colin Hoehn ("Hoehn"), hereinafter collectively referred to as "Respondents," were represented by Alicia L. Downey, Esq., Bingham McCutchen LLP, Boston, Massachusetts.

CASE INFORMATION

The Statement of Claim was filed on or about July 1, 2003. The Submission Agreement of Claimants was signed on or about June 19, 2003.

The Statement of Answer was filed jointly by Respondents, Merrill Lynch and Hoehn, on or about September 15, 2003. The Submission Agreement of Respondent Merrill Lynch was signed on or about August 8, 2003. The Submission Agreement of Respondent Hoehn was signed on or about September 17, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: unsuitable investments; negligence; fraud; undisclosed conflicts of interest; failure to supervise; violation of the Illinois Securities Law of 1953; violations of NASD Conduct Rules; breach of contract; constructive fraud/breach of fiduciary duty; and common law fraud.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants failed to state a claim upon which relief can be granted; Claimants suffered no damages resulting from any acts or omissions of the Respondents; Respondents are not liable to Claimants in any amount because, at all times relevant herein, Respondents acted properly and in good faith with respect to claimants' account; under the terms of the customer agreements executed by Claimants, all substantive claims raised by claimant with respect to their account are to be determined under New York law, which bars their claims under Illinois law or the law of any state other than New York; Claimants ratified Respondents' conduct with respect to each and every purchase or sale; all risks inherent in the investments are issue were fully disclosed and/or known to Claimants. Moreover, any losses incurred by Claimants were the direct result of adverse economic or market conditions and/or the acts of persons not under Respondents' control; Claimants failed to mitigate their damages; Claimants directed, approved and/or authorized each and every transaction for their account and/or ratified, accepted, acquiesced and confirmed in all respects such transactions. As such, Claimants' claims are barred by the equitable doctrines of estoppel, laches, ratification, and waiver; Claimants' allegations of securities fraud under federal and/or state law, including allegations that Merrill Lynch or its agents violated the Illinois Securities Laws, are barred by the applicable statutes of limitations; At all relevant times, Merrill Lynch maintained an adequate and reasonable system of supervision and control over its employees, and at all relevant times acted in good faith and did not at any time, directly or indirectly, induce any act or acts constituting a violation or cause of action, thus, Merrill Lynch is not subject either to "Control person" or *respondeat superior* liability; Claimants are not entitled to an award of attorneys' fees, punitive damages, interest or the costs of this proceeding; Claimants' alleged losses were proximately caused by their own conduct, negligence, comparative or contributory negligence, and therefore, Claimants are precluded from recovery; All transactions upon which Claimants base their alleged claims were conducted in accordance with all applicable ruled and regulations and in compliance with all applicable provisions of state and federal law; there is no legal basis for a damage claim based on the theory that an investor decided not to sell a stock in reliance on the statement of another. The United States Supreme Court has expressly rules; any claims based on the Claimants' decisions to hold certain securities, whether or not in reliance on Respondents' advice, must therefore be dismissed; Claimants failed to use the requisite due diligence in monitoring, trading, managing, and handling their account.

RELIEF REQUESTED

Claimants requested: compensatory damages of \$242,000; attorneys fees and costs of arbitration, including but not limited to expert witness fees, expenses and accounting fees as specifically authorized under the IL Securities Law of 1953; lost interest at the statutory rate of 10% annually, as authorized under the IL Securities Law of 1953; pre and post-award interest at the statutory rate; and punitive damages.

Respondents requested dismissal of the Statement of Claim in its entirety. In furtherance of the parties' resolution of this matter, Respondents seek an Order recommending expungement of the CRD registration records of Respondent Colin Hoehn of all reference to these proceedings.

OTHER ISSUES CONSIDERED & DECIDED

The parties advised NASD Dispute Resolution that they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies. The parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings and the stipulation of the parties, but without making any findings of fact or conclusions of law, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination and find as follows:

1. The parties have agreed to settle this matter for a sum certain to be paid by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.
2. Claimants' claims are hereby dismissed in their entirety with prejudice, and all other requests for relief are denied.
3. All parties are to bear their own attorneys' fees.
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Colin Hoehn'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 Colin Hoehn must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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	\$ 300.00
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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 Inc.

Member surcharge	\$ 1,700.00
Pre-hearing process fee	\$ 750.00
Hearing process fee	\$ 2,750.00
Member Fees	\$ 5,200.00

Adjournment Fees

Adjournments requested during these proceedings:

May 24-27, 2005, requested by Claimants	\$ 1,125.00
Total Adjournment Fees	\$ Waived

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 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 \$ 1,125.00	\$ 1,125.00
Pre-hearing conference: September 15, 2004	1 session	
Total Forum Fees		\$ 1,125.00

The Arbitration Panel has assessed \$562.50 of the forum fees jointly and severally to Claimants
The Arbitration Panel has assessed \$562.50 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

Claimants shall be and hereby are jointly and severally liable for:

Initial Filing Fee	\$ 300.00
Forum Fees	\$ 562.50
Total Fees	\$ 862.50
Less Payments	\$ 1,425.00
Refund Due from NASD Dispute Resolution	\$ 562.50

Respondent, Merrill Lynch, shall be and hereby is liable for:

Member Fee	\$ 5,200.00
Total Fees	\$ 5,200.00
Less Payments	\$ 5,200.00
Balance Due NASD Dispute Resolution	\$ 0.00

Respondents shall be and hereby are jointly and severally liable for:

Forum Fees	\$ 562.50
Total Fees	\$ 562.50
Less Payments	\$ 0.00
Balance Due NASD Dispute Resolution	\$ 562.50

All balances are due to NASD Dispute Resolution

Parties' Signatures

By and through their undersigned counsel, the parties stipulate to the entry of this Stipulated Award.

Claimants Jerrold Cohan, Lydia Cohan and Howard Cohan

By their attorneys,

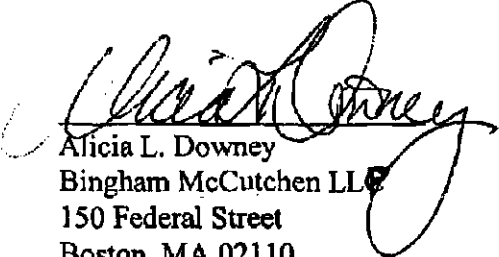


Andrew Stoltmann
Stoltmann Law Offices
10 South LaSalle Street, Suite 3300
Chicago, Illinois 60603-1002

8/24/05
Signature Date

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc.,
Menard Sanford Schwartz and Steven LaPorta

By their attorneys,

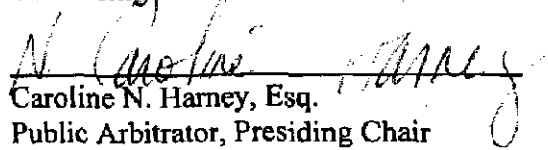

Alicia L. Downey
Bingham McCutchen LLC
150 Federal Street
Boston, MA 02110

8/23/05
Signature Date

ARBITRATION PANEL

Caroline N. Harney, Esq. - Public Arbitrator, Presiding Chair
Sheila A. Reilly, Esq. - Public Arbitrator
John E. Sundeen - Non-Public Arbitrator

Concurring Arbitrators:


Caroline N. Harney, Esq.
Public Arbitrator, Presiding Chair

9/15/05
Signature Date

Sheila A. Reilly, Esq.
Public Arbitrator

Signature Date

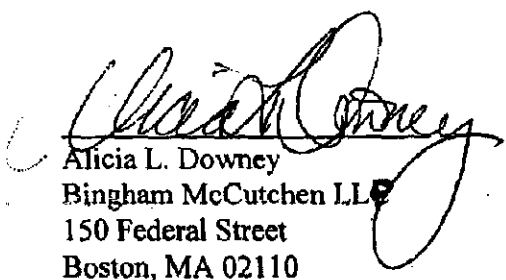
John E. Sundeen
Non-Public Arbitrator

Signature Date

9/27/05
Date of Service (For NASD office use only)

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc.,
Menard Sanford Schwartz and Steven LaPorta

By their attorneys,


Alicia L. Downey
Bingham McCutchen LLP
150 Federal Street
Boston, MA 02110

8/23/05
Signature Date

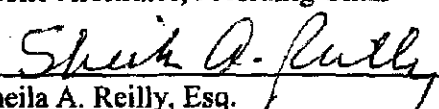
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Sheila A. Reilly, Esq. - Public Arbitrator
John E. Sundeen - Non-Public Arbitrator

Concurring Arbitrators:

Caroline N. Harney, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Sheila A. Reilly, Esq.
Public Arbitrator

8/30/05
Signature Date

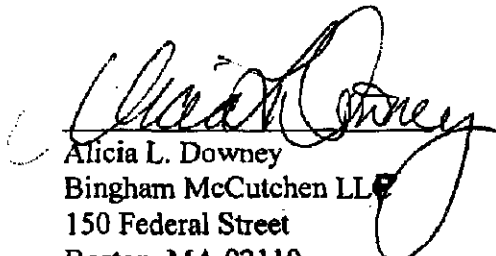
John E. Sundeen
Non-Public Arbitrator

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Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc.,
Menard Sanford Schwartz and Steven LaPorta

By their attorneys,


Alicia L. Downey
Bingham McCutchen LLP
150 Federal Street
Boston, MA 02110

8/23/05
Signature Date

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Sheila A. Reilly, Esq. - Public Arbitrator
John E. Sundeen - Non-Public Arbitrator

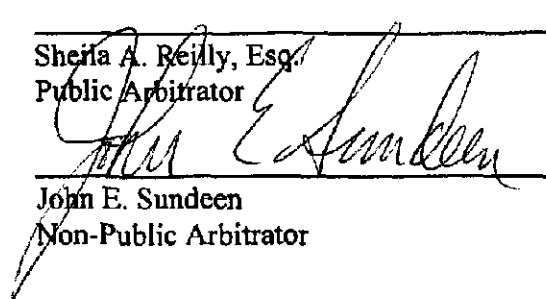
Concurring Arbitrators:

Caroline N. Harney, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Sheila A. Reilly, Esq.
Public Arbitrator

Signature Date


John E. Sundeen
Non-Public Arbitrator

8/29/05
Signature Date

Date of Service (For NASD office use only)