

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Dean Yannias,

Claimant;

Case Number: - 03-04935

v.

Hearing Site: Chicago, Illinois

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
and Steven LaPorta,

Respondents.

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**NATURE OF THE DISPUTE**

Customer vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Dean Yannias, ("Yannias"), hereinafter referred to as "Claimant": Jeffrey M. Gershon, Esq. of the law firm Shaheen, Novoselsky, Staat, Filipowski & Eccelston, located in Chicago, Illinois.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Steven LaPorta, ("LaPorta"), hereinafter collectively referred to as "Respondents": Ellen S. Robbins, Esq. of the law firm Sidley Austin Brown & Wood, LLP, located in Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: July 7, 2003

Claimant Yannias signed the Uniform Submission Agreement: June 27, 2003

Statement of Answer and Motion to Dismiss, jointly filed by Respondents, Merrill Lynch and LaPorta, on or about: October 10, 2003

Respondent, Merrill Lynch, signed the Uniform Submission Agreement: August 26, 2003

Respondent, LaPorta, signed the Uniform Submission Agreement: October 7, 2003

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, negligence misrepresentation, breach of contract, control person liability, failure to supervise and Respondeat Superior. The causes of action relate to various individual equities and equity mutual funds, including Federated Large Cap Growth fund, Nuveen Rittenhouse Growth fund and State Street Investment Trust; and in equity mutual funds, including Alliance Technology Fund, Alliance Premier Growth fund and the Alliance Growth and Income fund, with the balance of the mutual fund investments were held in the Cohen & Streers REIT and the Alliance High Yield Bond fund. Respondents also recommended the purchase of technology stocks, including Cisco, EMC, Echostar and Tellabs. Claimant asserted that these securities were aggressive and unsuitable investments.

Unless specifically admitted in its Answer, Respondents, Merrill Lynch and LaPorta, denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The damages Claimant allegedly suffered were not proximately caused by Respondents.

2. Claimant has failed to mitigate his damages.
3. Claimant understood and voluntarily assumed the risks associated with his portfolio.
4. Respondents acted in good faith at all times in its dealings with the Claimant.
5. Claimant ratified, authorized, approved, accepted, acquiesced in, and confirmed in all respects the acts complained of in the Statement of Claim.
6. Claimant authorized and approved all transactions in the accounts at issue.
7. Claimant is barred from bringing each and all of the purported claims alleged in the Statement of Claim by the doctrine of laches.
8. Claimant is barred from bringing each and all of the purported claims alleged in the Statement of Claim by the doctrines of waiver and estoppel.
9. Any losses suffered by the Claimant were caused in whole or in part by his own negligence and/or contributory negligence.
10. The duties which Claimant assert were owed to them by the Respondents do not and did not apply and/or exist under the facts or the applicable law.
11. Claimant fails to state a claim upon which relief can be granted against the Respondents.
12. Section 404(c) of ERISA bars Claimant from pursuing any claims with respect to his self-directed 401(k).
13. Claimant cannot recover on his securities fraud claims because the Statement of Claim fails to plead facts sufficient to raise a strong inference that Respondents acted with scienter.
14. Claimant has failed to plead fraud with the necessary particularity.
15. Respondents did not misrepresent facts or fail to disclose material facts.
16. Any misrepresentation or omission by Respondents was not material.
17. Any losses allegedly suffered by Claimant were not foreseeable.
18. Any losses allegedly suffered by Claimant were a result of the declining stock market, and were not caused by Respondents.
19. Claimant's claims are barred to the extent any applicable statute of limitations has run.
20. Claimant's state law claims are preempted.
21. Claimant's claims for damages is barred to the extent that he seeks any unjust enrichment and must be reduced by the amounts of any tax benefits that Claimant realized by virtue of any deduction of a capital loss(es).
22. Claimant's claim for damages is barred to the extent it seeks damages that are not permitted under Section 502 of ERISA.
23. Claimant is not entitled to attorney's fees or costs under any statute, law or contract.

#### **RELIEF REQUESTED**

Claimants requested \$655,000.00 in compensatory damages; prejudgment interest, attorney's fees, expenses and costs; an unspecified amount in punitive damages; and any such other and further relief as is just and equitable.

Respondents requested the Statement of Claim be dismissed, that all references to this matter be expunged from Respondent LaPorta's individual registration records, and that the Claimant be ordered to pay all fees and costs, together with such and further relief as is deemed just and proper.

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

The parties have agreed that the Stipulated 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 originals remain on file with the NASD Dispute Resolution (the "NASD").

On or about November 23, 2005, NASD was notified that this matter had been settled. As part of the parties' settlement agreement, Respondents request that the Panel enter a Stipulated Award expunging all references to this matter from Respondent Steven S. LaPorta's registration records maintained by NASD.

### **AWARD**

After considering the parties' submissions and representations, having heard the parties' arguments for findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Any and all claims asserted against Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Steven S. LaPorta, are hereby dismissed with prejudice;
- 2.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Steven S. LaPorta'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 LaPorta must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 3.) Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees; and
- 4.) Any and all relief not specifically enumerated, including punitive damages 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

#### **Adjournment Fees**

Adjournments requested during these proceedings:

February 28, 2005 – March 2, 2005,  
adjournment by Respondent Merrill Lynch = \$1,200.00  
(waived by Panel)

#### **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 a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

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

The 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 \$1,200.00	= \$1,200.00
Pre-hearing Date: April 2, 2004	1 session
December 14, 2005	1 session
<b>Total Forum Fees</b>	<b>= \$2,400.00</b>

Pursuant to NASD Dispute Resolution Code of Arbitration Procedure Rule 10306(c):  
Claimant, Dean Yannias, is to pay \$800.00 of the total forum fees;  
Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., is to pay \$800.00 of the total forum fees; and  
Respondent, Steve S. LaPorta, is to pay \$800.00 of the total forum fees.

#### **FEE SUMMARY**

Claimant, Dean Yannias, is hereby solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 800.00
<b>Total Fees</b>	<b>= \$1,175.00</b>
Less payments (refund of \$800 sent on 12/8/05)	= \$ 775.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 400.00</b>

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. is hereby solely liable for:

Member Fees	= \$7,000.00
Forum Fees	= \$ 800.00
<b>Total Fees</b>	<b>= \$7,800.00</b>
Less payments	= \$7,000.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 800.00</b>

Respondent, Steven S. LaPorta, is hereby solely liable for:

Forum Fees	= \$ 800.00
Less payments	= \$ 0.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 800.00</b>

All balances are due to NASD Dispute Resolution.

#### **ARBITRATION PANEL**

Michael S. Jordan	-	Public Arbitrator, Presiding Chairperson
Pamela A. Kentra, Esq.	-	Public Arbitrator
Ramona V. Larson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Michael S. Jordan  
Michael S. Jordan  
Public Arbitrator, Presiding Chair

12/14/05  
Signature Date

/s/ Pamela A. Kentra, Esq.  
Pamela A. Kentra, Esq.  
Public Arbitrator

12/14/05  
Signature Date

/s/ Ramona V. Larson  
Ramona V. Larson  
Non-Public Arbitrator

12/14/05  
Signature Date

12/15/05  
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

Michael S. Jordan  
Michael S. Jordan  
Public Arbitrator, Presiding Chair

12/14/03  
Signature Date

Pamela A. Kentra, Esq.  
Pamela A. Kentra, Esq.  
Public Arbitrator

Signature Date

Ramona V. Larson  
Ramona V. Larson  
Non-Public Arbitrator

Signature Date

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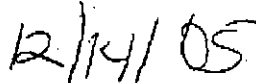
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Michael S. Jordan  
Public Arbitrator, Presiding Chair

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Signature Date





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Pamela A. Kenra, Esq.  
Public Arbitrator

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Signature Date

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Ramona V. Larson  
Non-Public Arbitrator

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NASD Dispute Resolution

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Michael S. Jordan

Public Arbitrator, Presiding Chair

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Signature Date

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Pamela A. Kentra, Esq.

Public Arbitrator

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Ramona V. Larson

Non-Public Arbitrator

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