

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Dhiraj Murthy, Individually and as Trustee and Beneficiary of the Dhiraj Murthy Revocable Trust Dated 04/05/00, Claimants v. Merrill Lynch, Pierce, Fenner and Smith Incorporated and Canard E. Barnes, Respondents

Case Number: 03-05500

Hearing Site: Portland, Oregon

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

REPRESENTATION OF PARTIES

For Claimants:

Jonathan W. Evans, Esq.
Jonathan W. Evans & Associates
Studio City, California

For Respondents:

Paul D. Allen, Esq.
Todd A. Boock, Esq.
Bingham McCutchen LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: July 25, 2003

Claimants' Joint Uniform Submission Agreement signed: June 24, 2003

Joint Statement of Answer filed by Respondents: October 28, 2003

Respondent Merrill Lynch, Pierce, Fenner and Smith Incorporated's Uniform Submission Agreement signed: August 14, 2003

Respondent Canard E. Barnes' Uniform Submission Agreement signed: None Filed

CASE SUMMARY

Claimants' Statement of Claim complains of transactions effected in Claimants' accounts by Mr. Barnes, a representative of Merrill Lynch, Pierce, Fenner and Smith Incorporated, and alleges that Respondents are liable to Claimants for the losses sustained in Claimants' Merrill Lynch accounts. Claimants also alleged that this dispute involves investments in high technology stocks including Exodus Communications.

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

RELIEF REQUESTED

Claimants requested actual damages in the amount of \$2,851,454.51, plus commissions and fees, lost opportunity costs and interest. Claimants also sought punitive damages of an unspecified amount and reimbursement for costs and fees incurred in bringing this arbitration.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety and an expungement of all reference to the above captioned arbitration from the registration record of Canard E. Barnes maintained by the NASD Central Registration Depository.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Canard Barnes did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the NASD *Code of Arbitration Procedure* (Code) and having answered the claim is bound by the determination of the Panel on all issues submitted.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

AWARD

After considering the preceding Stipulation of the parties, the Panel has decided in full and final resolution of the issues submitted for determination, as follows:

1. The Panel notes the parties' stipulation that all claims asserted by the Claimants against the Respondents have been resolved.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Canard E. Barnes' registration record maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Canard E. Barnes 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.
4. Pursuant to the parties' stipulation, all outstanding forum fees shall be split equally.
5. 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 = \$ 500.00

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, Pierce, Fenner and Smith Incorporated is a party and the following fees are assessed:

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

Adjournment Fees

The following adjournment fees are assessed:

February 21-25, 2005 adjournment requested by all parties = Waived

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 or the parties and the Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the a single arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences: January 30, 2005 1 session	
July 5, 2005 1 session	
One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: January 6, 2004 1 session	
Total Forum Fees	= \$ 2,100.00

1. The Panel assessed \$1,162.50 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$112.50 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner and Smith Incorporated.
3. The Panel assessed \$825.00 of the forum fees jointly and severally to Respondents.

Fee Summary

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

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 1,162.50
Total Fees	= \$ 1,662.50
Less payments	= \$ (1,800.00)
Refund Due Claimants	= \$ (137.50)

2. Respondent Merrill Lynch, Pierce, Fenner and Smith Incorporated is charged with the following fees and costs:

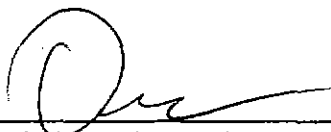
Member Fees	= \$ 8,550.00
Forum Fees	= \$ 112.50
Total Fees	= \$ 8,662.50
Less payments	= \$ (8,550.00)
Balance Due NASD Dispute Resolution	= \$ 112.50

3. Respondents Merrill Lynch, Pierce, Fenner and Smith Incorporated and Canard E. Barnes are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 825.00
Balance Due NASD Dispute Resolution	= \$ 825.00

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.

PARTIES' SIGNATURES



Dhiraj Murthy, Claimant

September 23, 2005

Signature Date

Merrill Lynch, Pierce, Fenner & Smith
Incorporated, Respondent

Signature Date


Canard E. Barnes, Respondent

Signature Date

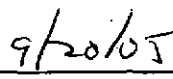
PARTIES' SIGNATURES

Dhiraj Murthy, Claimant

Signature Date

By: 

Merrill Lynch, Pierce, Fenner & Smith
Incorporated, Respondent



Signature Date

Canard E. Barnes, Respondent

Signature Date

PARTIES' SIGNATURES

Dhiraj Murthy, Claimant

Signature Date

Merrill Lynch, Pierce, Fenner & Smith
Incorporated, Respondent

Signature Date



Canard E. Barnes, Respondent

Signature Date

ARBITRATION PANEL

Kim Trowbridge Buckley

-

Public Arbitrator, Presiding Chair

Gerald D. Wygant

-

Public Arbitrator

Peter Frank Bozikovich

-

Non-Public Arbitrator

Concurring Arbitrators' Signatures



Kim Trowbridge Buckley
Chair, Public Arbitrator

Signature Date

Gerald D. Wygant
Public Arbitrator

Signature Date

Peter Frank Bozikovich
Non-Public Arbitrator

Signature Date

12/29/05

Date of Service

ARBITRATION PANEL

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Gerald D. Wygant	-	Public Arbitrator
Peter Frank Bozikovich	-	Non-Public Arbitrator

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Signature Date



Gerald D. Wygant
Public Arbitrator

12-3-05
Signature Date

Peter Frank Bozikovich
Non-Public Arbitrator

Signature Date

12/29/05
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Peter Frank Bozikovich
Non-Public Arbitrator

12/29/05

Signature Date

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Date of Service