

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Claimants

James E. Latta and Charlotte Latta, individually,
and on behalf of the Highland Ranch Center for
Aesthetic and Maxillofacial Surgery P.C.
Profit Sharing Plan and Trust, the Highland
Ranch Center for Aesthetic and Maxillofacial
Surgery P.C. Money Purchase Pension Plan
Trust and their IRAs; Lucinda Koerner and
Ronald Koerner, individually, and on behalf of
Caitlyn L. Koerner and Joshua A. Koerner;
Shelia K. Schlifkin and Earl R. Schlifkin,
individually, and on behalf of their IRAs
and retirement plans; Tracy S. Pavillard
and Tamela Pavillard, individually, and
on behalf of their IRAs; and Daniel C. Jonuska
individually, and on behalf of his IRA

v.

03-05515
Denver, Colorado

Respondents

Merrill Lynch, Pierce, Fenner and Smith, Inc.,
George Fritz Stahmer, III, Jeffrey W. Hendley,
Thomas J. Klucsarits, Edward G. Schrandt
Charles V. Senatore, and Deepak D. Raj

Nature of Dispute: Customers v. Member and Associated Persons

REPRESENTATION OF PARTIES

James E. Latta and Charlotte Latta, individually, and on behalf of the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Profit Sharing Plan and Trust, the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Money Purchase Pension Plan Trust and their IRAs; Lucinda Koerner and Ronald Koerner, individually, and on behalf of Caitlyn L. Koerner and Joshua A. Koerner; Shelia K. Schlifkin and Earl R. Schlifkin, individually, and on behalf of their IRAs and retirement plans; Tracy S. Pavillard and Tamela Pavillard, individually, and on behalf of their IRAs; and Daniel C. Jonuska individually, and on behalf of his IRA, hereinafter referred to as "**Claimants**," were represented by Kenneth B. Siegel, Esq., and Tamir I. Goldstein, Esq., of Sherman & Howard, L.L.C., Denver, Colorado.

Merrill Lynch, Pierce, Fenner and Smith, Inc. ("**Merrill Lynch**"), George Fritz Stahmer, III ("**Stahmer**"), Jeffrey W. Hendley ("**Hendley**"), Thomas J. Klucsarits ("**Klucsarits**") and Edward G. Schrandt ("**Schrandt**"), hereinafter referred to as "**Respondents**," were represented by J Jackson, Esq., and Thomas P. Swigert, Esq., of Dorsey & Whitney, LLP, Minneapolis, Minnesota.

Charles V. Senatore, ("**Senatore**") was represented by Lawrence D. Ross, Esq., of Bressler Amery & Ross, P.C., Denver, Colorado.

Deepak D. Raj ("**Raj**") was represented by Frances J. Earley, Esq., of Schulte Roth & Zabel, LLP, New York City, New York.

CASE INFORMATION

The Statement of Claim was filed on or about July 25, 2003. The Uniform Submission Agreement of Claimant, Daniel C. Jonuska individually, and on behalf of his IRA, was signed on or about July 17, 2003. The Uniform Submission Agreement of Claimant, Shelia K. Schlifkin and Earl R. Schlifkin, Individually, and on behalf of their IRAs and retirement plans, was signed on or about July 20, 2003. The Uniform Submission Agreement of Claimants, James E. Latta and Charlotte Latta, individually, and on behalf of the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Profit Sharing Plan and Trust Tracy S. Pavillard and Tamela Pavillard, individually, and on behalf of their IRAs was signed on or about July 21, 2003. The Uniform Submission Agreement of Claimants, the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Money Purchase Pension Plan Trust and their IRAs, Lucinda Koerner and Ronald Koerner, individually, and on behalf of Caitlyn L. Koerner and Joshua A. Koerner, was signed on or about August 5, 2003.

A Statement of Answer was filed jointly by Respondents, Merrill Lynch, Pierce, Fenner and Smith, Inc., George Fritz Stahmer, III, Jeffrey W. Hendley, Thomas J. Klucsarits and Edward G. Schrandt on or about October 17, 2003.

Respondent, Raj, filed a Motion for Expungement on or about March 31, 2004.

CASE SUMMARY

Claimants asserted causes of action including the following: breach of fiduciary duty, negligence, breach of contract, violation of the Colorado Consumer Protection Act, securities fraud, and common law fraud. The causes of action related to Claimants' allegation that Respondents failed to disclose conflicts of interest relating to their improper relationship with Merrill Lynch investment banking clients and the subsequent misleading and fraudulent reports issued by the Merrill Lynch research analysts. As a result of these non-disclosures, Claimants alleged that they were not given accurate financial analysis in holdings such as InfoSpace, ICGE and Tyco, which were later purchased for their accounts. Claimants alleged that because of the unsuitable advice provided by Respondents,

non-disclosures and Respondents' disregard of the concept of asset allocation and diversification, Claimants suffered substantial losses in their accounts.

Respondents, Merrill Lynch, Pierce, Fenner and Smith, Inc., George Fritz Stahmer, III, Jeffrey W. Hendley, Thomas J. Klucsarits and Edward G. Schrandt, denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants failed to state a claim upon which relief can be granted; losses suffered by Claimants, if any were caused by events or circumstances over which Respondents had no control, including the general volatility of the market; Claimants assumed the risks of their investments, and the risks were properly disclosed to Claimants by Respondents; Claimants specifically approved, authorized, and ratified the investments, trades, and other actions complained of in their Statement of Claim; and Respondents, at all times, acted properly, in good faith, and in a commercially reasonable manner with respect to Claimants and their accounts.

RELIEF REQUESTED

Claimants requested an award in the amount of \$5,074,000 in compensatory damages, plus unspecified consequential and punitive damages, interest, costs, attorneys' fees, rescission of transactions on a stick by stock basis and any other relief the panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents requested that the panel order expungement of all references to this matter from their respective permanent registration records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

Claimants submitted a Stipulation of Dismissal without prejudice as to all claims asserted against Respondent, Charles V. Senatore, on or about October 16, 2003.

Claimants submitted a Stipulation of Dismissal with prejudice as to all claims asserted against Respondent, Deepak D. Raj, on or about December 8, 2003.

The Panel entered an Order on or about August 1, 2004, granting Respondent's Raj's Motion for Expungement and ordered a new case file to be opened relating solely to Respondent Raj's request for expungement.

Respondents, Merrill Lynch, Pierce, Fenner and Smith, Inc., George Fritz Stahmer, III, Jeffrey W. Hendley, Thomas J. Klucsarits and Edward G. Schrandt did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to Rule 10301 the Code and having answered the claim, and appeared and testified though

counsel at the pre-hearing conference calls, are bound by the determination of the Panel on all issues submitted.

Prior to the hearing, the parties fully and finally settled all claims between them. The parties have also asked for the panel to execute a Stipulated Award and hereby submit it for their consideration and request that it be entered.

The parties have agreed that the 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 NASD Dispute Resolution ("NASD").

AWARD

After reviewing the pleadings and files contained herein, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

1. The parties have amenablely resolved their differences and have requested this Stipulated Award;
2. Claimants' claims, each and all, against Respondents, Merrill Lynch, Pierce Fenner & Smith, Inc., George Fritz Stahmer, III, Jeffrey W. Hendley, Thomas J. Klucsarits and Edward G. Schrandt, having been withdrawn are dismissed with prejudice in their entirety;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents, Thomas J. Klucsarits' and Edward G. Schrandt'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, Respondents, Thomas J. Klucsarits and Edward G. Schrandt, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are denied with prejudice and;
5. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 600

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Merrill Lynch, Pierce, Fenner and Smith, Inc.

Member surcharge = \$ 2,800
Pre-hearing process fee = \$ 750
Hearing process fee = \$ 5,000

Adjournment Fees

Adjournments granted during these proceedings:

12/06/04 – 12/10/2004, 12-13/04 – 12/17/04 & 01/24/05 – 1/28/2005
Adjournment requested by all parties = \$ 1,200
(Fee waived by the Panel)

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing session with Chairperson x \$ 450 = \$ 900

Pre-hearing conferences: 04/26/2004 1 session
11/04/2004 1 session

Three (3) Pre-hearing session with Panel x \$ 1,200 = \$ 3,600

Pre-hearing conferences: 04/01/2004 1 session
10/28/2004 1 session
12/06/2004 1 session

Total Forum Fees

= \$ 4,500

The Arbitration Panel has assessed \$ 2,250 of the forum fees to James E. Latta and Charlotte Latta, individually, and on behalf of the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Profit Sharing Plan and Trust, the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Money Purchase Pension Plan Trust and their IRAs; Lucinda Koerner and Ronald Koerner, individually, and on behalf of Caitlyn L. Koerner and Joshua A. Koerner; Shelia K. Schlifkin and Earl R. Schlifkin, individually, and on behalf of their IRAs and retirement plans; Tracy S. Pavillard and Tamela Pavillard, individually, and on behalf of their IRAs; and Daniel C. Jonuska individually, and on behalf of his IRA

The Arbitration Panel has assessed \$ 2,250 of the forum fees jointly and severally to Merrill Lynch, Pierce, Fenner and Smith, Inc., George Fritz Stahmer, III, Jeffrey W. Hendley, Thomas J. Klucsarits and Edward G. Schrandt.

FEE SUMMARY

Claimants, James E. Latta and Charlotte Latta, individually, and on behalf of the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Profit Sharing Plan and Trust, the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Money Purchase Pension Plan Trust and their IRAs; Lucinda Koerner and Ronald Koerner, individually, and on behalf of Caitlyn L. Koerner and Joshua A. Koerner; Shelia K. Schlifkin and Earl R. Schlifkin, individually, and on behalf of their IRAs and retirement plans; Tracy S. Pavillard and Tamela Pavillard, individually, and on behalf of their IRAs; and Daniel C. Jonuska individually, and on behalf of his IRA, are jointly and severally liable for:

Initial Filing Fee	= \$ 600
Forum Fees	= \$ 2,250
Total Fees	= \$ 2,850
Less payments	= \$ 1,800
Balance Due NASD Dispute Resolution	= \$ 1,050

Respondent, Merrill Lynch, Pierce, Fenner and Smith, Inc., is liable for:

Member Fees	= \$ 8,550
Total Fees	= \$ 8,550
Less payments	= \$ 8,550
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Merrill Lynch, Pierce, Fenner and Smith, Inc., George Fritz Stahmer, III, Jeffrey W. Hendley, Thomas J. Klucsarits and Edward G. Schrandt are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,250
<u>Total Fees</u>	= \$ 2,250
<u>Less payments</u>	= \$ 500
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,750

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

ARBITRATION PANEL

Deanna M. Tuley, Esq. - Public Arbitrator, Presiding Chair

Michael J. Norton - Public Arbitrator

Gerald K. Moore- Non-Public Arbitrator

Concurring Arbitrators:

Deanna M. Tuley, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Michael J. Norton
Public Arbitrator

Signature Date

Gerald K. Moore
Non-Public Arbitrator

Signature Date

2/12/05

Date of Service (NASD use only)

Respondents, Merrill Lynch, Pierce, Fenner and Smith, Inc., George Fritz Stahmer, III, Jeffrey W. Hendley, Thomas J. Klucsarits and Edward G. Schrandt are jointly and severally liable for:

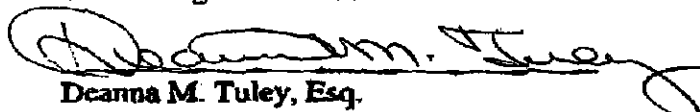
<u>Forum Fees</u>	= \$ 2,250
<u>Total Fees</u>	= \$ 2,250
<u>Less payments</u>	= \$ 500
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,750

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Michael J. Norton - Public Arbitrator
Gerald K. Moore- Non-Public Arbitrator

Concurring Arbitrators:


Deanna M. Tuley, Esq.
Public Arbitrator, Presiding Chair

FEB 16, 2005
Signature Date

Michael J. Norton
Public Arbitrator

Signature Date

Gerald K. Moore
Non-Public Arbitrator

Signature Date

2/17/05
Date of Service (NASD use only)

NASD Dispute Resolution
Arbitration No. 03-05515
Stipulated Award Page 7 of 7

Respondents, Merrill Lynch, Pierce, Fenner and Smith, Inc., George Fritz Stahmer, III, Jeffrey W. Hendley, Thomas J. Klucsarits and Edward G. Schrandt are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,250
<u>Total Fees</u>	= \$ 2,250
<u>Less payments</u>	= \$ 500
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,750

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Public Arbitrator, Presiding Chair

Signature Date



Michael J. Norton
Public Arbitrator



Signature Date

Gerald K. Moore
Non-Public Arbitrator

Signature Date

2/17/05

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NASD Dispute Resolution
Arbitration No. 03-05515
Stipulated Award Page 7 of 7

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<u>Forum Fees</u>	= \$ 2,250
<u>Total Fees</u>	= \$ 2,250
<u>Less payments</u>	= \$ 500
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Concurring Arbitrators:

Deanna M. Tuley, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Michael J. Norton
Public Arbitrator

Signature Date



Gerald K. Moore
Non-Public Arbitrator

2-15-05

Signature Date

2/17/05

Date of Service (NASD use only)