

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kashmiri Lal Mahna (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Elliott M. Kugel (Respondents).

Case Number: 03-06138

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant, Kashmiri Lal Mahna ("Mahna"), hereinafter referred to as "Claimant": Matthew W. Woodruff, Esq., Eppenstein & Eppenstein, New York, NY.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Elliott M. Kugel ("Kugel"), hereinafter collectively referred to as "Respondents": Nicolas P. Crowell, Esq., Sidley Austin Brown & Wood LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 22, 2003.

Claimant signed the Uniform Submission Agreement: August 19, 2003.

Statement of Answer filed by Respondents on or about: October 30, 2003.

Respondents did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; breach of fiduciary duty; failure to supervise; misrepresentations and omissions; negligence; gross negligence; negligent misrepresentation; fraudulent or unauthorized trading; fraud; fraudulent research; breach of contract and breach of the covenant of good faith and fair dealing; breach of warranty; and *respondeat superior*. The causes of action relate to common stock of Aether Systems, Verisign, Broadcom, Phone.com, Redback Networks and Applied Microcircuits.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory, and/or rescissory and/or benefit of the bargain damages for all losses incurred as a result of Respondents' conduct, in such amount as is proved upon the evidentiary hearings in this matter; exemplary damages for Respondents' gross and willful bad faith and misconduct; disgorgement of Respondents' compensation; forum fees and administrative fees, reasonable attorneys' fees, costs, expert witness fees and other witness fees, if any, forum and administrative expenses and all other costs and expenses incurred by Mr. Mahna in connection with this arbitration; together with accrued interest from the date of the award until the payment of such award; as well as such other and further relief as may appear just and equitable.

Respondents' requested Claimant's Statement of Claim be dismissed with prejudice; Claimant be directed to pay all applicable forum costs and expenses and all of Respondents' costs and reasonable attorneys' fees incurred; the disciplinary record of Respondent Elliot Kugel be expunged, and Respondents be awarded such other and further relief as the Panel deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kugel 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 Kugel 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 = \$ 250.00

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. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge = \$ 1,500.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,200.00

Total Member Fees = \$ 4,450.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

April 19, 2005 adjournment by Merrill Lynch = waived

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

April 19, 2005 adjournment by Merrill Lynch = \$300.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 1,350.00

Pre-hearing conferences: June 10, 2004 1 session
July 19, 2004 1 session
September 9, 2004 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,000.00 = \$ 2,000.00

Pre-hearing conference: May 4, 2004 1 session
November 5, 2004 1 session

Thirty-two (32) Hearing sessions @ \$1,000.00 = \$32,000.00

Hearing Dates: September 21, 2004 2 sessions
September 23, 2004 2 sessions

October 26, 2004	2 sessions
October 28, 2004	2 sessions
April 21, 2005	2 sessions
April 26, 2005	2 sessions
April 28, 2005	2 sessions
May 3, 2005	2 sessions
May 5, 2005	2 sessions
June 28, 2005	2 sessions
June 29, 2005	2 sessions
June 30, 2005	2 sessions
July 11, 2005	2 sessions
July 12, 2005	2 sessions
July 13, 2005	2 sessions
July 14, 2005	2 sessions

Total Forum Fees	= \$35,350.00
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1. The Panel has assessed \$17,675.00 of the forum fees against Claimant.
2. The Panel has assessed \$17,675.00 of the forum fees against Respondent Merrill Lynch.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$17,675.00
Total Fees	= \$17,925.00
Less payments	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$16,675.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$17,675.00
3 Day Cancellation Fee	= \$ 300.00
Total Fees	= \$22,425.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$17,975.00

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

NASD Dispute Resolution
Arbitration No. 03-06138
Award Page 5 of 5

ARBITRATION PANEL

Noel B. Berman, Esq.	-	Public Arbitrator, Presiding Chairperson
Thomas D. Giordano, Esq.	-	Public Arbitrator
William E.S. Browning, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

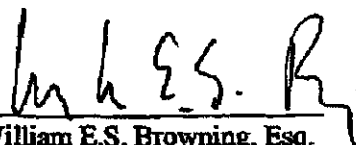
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Noel B. Berman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Thomas D. Giordano, Esq.
Public Arbitrator

Signature Date



William E.S. Browning, Esq.
Non-Public Arbitrator

Signature Date



Date of Service (For NASD Dispute Resolution use only)

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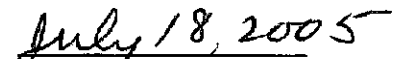
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