

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Kenny W. Wilson

Case Number: 03-06147

Name of the Respondents
Merrill Lynch, Pierce, Fenner & Smith, Inc.
and Milton H. Ohlsen

Hearing Site: St. Louis, Missouri

NATURE OF DISPUTE

Customer vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Charles A. Seigel, Esq. of the law firm Seigel & Wolff located in St. Louis, Missouri and co-counsel Michael A. Fisher of The Stolar Partnership, LLP located in St. Louis, Missouri filed an appearance for Claimant, Kenny W. Wilson ("Wilson"), hereinafter referred to as "Claimant." Charles A. Seigel appeared at the hearing for Claimant Wilson.

David Newsome, Esq. and D. Michael O'Neill of the law firm Day, Edwards, Propester & Christensen, P.C., located in Tulsa, Oklahoma, filed an appearance on behalf of Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Milton H. Ohlsen ("Ohlsen"), hereinafter collectively referred to as "Respondents." David Newsome and Bruce Day of Day, Edwards, Propester & Christensen, P.C. appeared at the hearing for Respondents.

CASE INFORMATION

Statement of Claim filed on or about August 25, 2003. Claimant Wilson signed the Uniform Submission Agreement on August 21, 2003.

Respondents Merrill Lynch and Ohlsen filed a Joint Statement of Answer on November 13, 2003. Merrill Lynch signed the Uniform Submission Agreement on September 29, 2003, and Ohlsen signed the Uniform Submission Agreement on October 13, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty, suitability, omissions, misrepresentations, unauthorized trading and failure to supervise. The causes of action relate to various technology, telecom and e-commerce stocks such as E-Toys, AOL, Buy.com, Cybersource, Cisco and Telecom HOLDERS Trust. Claimant asserted that these stocks were speculative in nature and unsuitable to Claimant's investment needs and objectives.

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

1. The Claim fails to state a claim upon which relief can be granted.
2. Claimant's claims are barred because Respondents had a good faith basis for their recommendations, if any.
3. Claimant's claims are barred because the risks inherent in the investments at issue were fully disclosed or known to Claimant, and Claimant assumed those risks.
4. Claimant's claims are barred because he failed to mitigate his damages.
5. The applicable statutes of limitation bar Claimant's claims.
6. Claimant's claims are barred because he suffered no damages by reason of the acts complained of in the Claim. Claimant's alleged damages were proximately caused by his own conduct and market forces.
7. Claimant assumed the risks of the investments he made through Merrill Lynch and through his unilateral decisions regarding when to purchase and whether to hold such securities.
8. Claimant is not entitled to any recovery because his claims are barred by the equitable defense of unclean hands.
9. All transactions upon which Claimant bases his claims against Respondents were conducted in accordance with all applicable securities industry rules and regulations.
10. Claimant is not entitled to any recovery because there is no private right of action for violation of NASD Rules.

RELIEF REQUESTED

Claimant requested \$3,750,000.00 in compensatory damages, punitive damages in the amount at least equal to actual damages, costs, attorney's fees and any such other relief the Panel deems appropriate.

Respondents, Merrill Lynch and Ohlsen, requested denial of the Claim in its entirety, costs and fees incurred in this action and expungement of the CRD record of Respondent Ohlsen.

OTHER ISSUES CONSIDERED AND DECIDED

The parties 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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Any and all claims asserted by Claimant, Kenny W. Wilson, are denied.
2. Parties shall bear their own costs, including attorneys' fees, except as specified herein.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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 = \$ 600.00

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 = \$ 2,800.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 2,400.00

Pre-hearing conferences: May 4, 2004 1 session

November 16, 2004 1 session

Eleven (11) Hearing sessions @ \$1,200.00 = \$13,200.00

Hearing Dates: December 13, 2004 3 sessions

December 14, 2004 3 sessions

December 15, 2004 3 sessions

December 16, 2004 2 sessions

Total Forum Fees = \$15,600.00

1. The Panel assessed 50% of the total forum fees in the amount of \$7,800.00 solely to Claimant, Kenny W. Wilson.
2. The Panel assessed 50% of the total forum fees in the amount of \$7,800.00 jointly and severally to Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Milton H. Ohlsen.

FEF SUMMARY

1. Claimant, Kenny W. Wilson, is solely liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 7,800.00
Total Fees	= \$ 8,400.00
<u>Less payments</u>	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 6,600.00

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

Member Fees	= \$ 8,550.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Milton H. Ohlsen, are jointly and severally liable for:

Forum fees	= \$ 7,800.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 7,800.00

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

ARBITRATION PANEL

Richard L. Pearce	-	Public Arbitrator, Presiding Chairperson
Jack D. Olson	-	Public Arbitrator
Kimberly Renee McBride	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Richard L. Pearce
Public Arbitrator, Presiding Chairperson

1/6/05
Signature Date

Jack D. Olson
Public Arbitrator

1/5/05
Signature Date

Kimberly Renee McBride
Non-Public Arbitrator

1/6/05
Signature Date

1/6/05
Date of Service (For NASD Dispute Resolution office use only)

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Jack D. Olson
Kimberly Renee McBride

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures



Richard L. Pearce
Public Arbitrator, Presiding Chairperson

1/06/05
Signature Date

Jack D. Olson
Public Arbitrator

Signature Date

Kimberly Renee McBride
Non-Public Arbitrator

Signature Date

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ARBITRATION PANEL

Richard L. Pearce

Jack D. Olson

Kimberly Renee McBride

-

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Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Richard L. Pearce

Public Arbitrator, Presiding Chairperson



Jack D. Olson

Public Arbitrator

Signature Date

5 JAN 2005

Signature Date

Kimberly Renee McBride

Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

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Jack D. Olson

Kimberly Renee McBride

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- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Richard L. Pearce

Public Arbitrator, Presiding Chairperson

Signature Date

Jack D. Olson
Public Arbitrator

Signature Date



Kimberly Renee McBride
Non-Public Arbitrator

1-6-05

Signature Date

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