

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Gurbachan S. and Inderjit Kapoor and GS Kapoor MD Inc.

and

03-06346
Chicago, Illinois

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Joseph M. Collins

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

REPRESENTATION OF PARTIES

Gurbachan S. and Inderjit Kapoor and GS Kapoor MD Inc. ("**Claimants**") were represented by Steven J. Rotunno, Esq., Kubasiak, Fylstra, Reizen & Rotunno, P.C., Chicago, Illinois.

Merrill Lynch Pierce Fenner & Smith, Inc. ("**Respondent MLPF & S**") and Joseph M. Collins ("**Respondent Collins**") hereinafter referred to as ("**Respondents**") were represented by Peter E. Cooper, Esq., Lawrence Kamin Saunders & Uhlenhop, LLC, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about September 2, 2003. Submission Agreement of Claimants Gurbachan S. and Inderjit Kapoor and GS Kapoor MD Inc. was signed on September 17, 2003.

Respondents' Answer and Affirmative Defenses to the Statement of Claim was filed by Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Joseph M. Collins on or about May 14, 2004. Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith, Inc. was signed on by March 11, 2004. Submission Agreement of Respondent Joseph M. Collins was signed on October 26, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: gross negligence, fraud, breach of fiduciary duty, violation of the Indiana Securities Law, and violation of the Investment Advisers Act of 1940. Claimants specifically alleged as follows:

...the Respondents failed to properly [sic] manage the Accounts. The Respondents improperly provided investment advice, and the Claimants' Account statements confirm that the Respondents' (a) purchased speculative securities and then negligently held them for too long and/or (b) wrongfully induced Claimants to continue to acquire speculative securities, creating substantial losses for the Claimants. With respect to the Pension Plan Account, the Account statements confirm the actionable judgment exercised by Mr. Collins in causing the Accounts to purchase, primarily, Merrill Lynch mutual funds. This permitted the Respondents to obtain commissions and mutual fund fees from the Claimants' investments and, of perhaps equal importance, permitted the Merrill Lynch mutual funds to obtain an inflow of capital. Indeed, it is likely that many of Respondents' clients, not just Claimants, were directed to Merrill Lynch mutual funds during this time period and under similar circumstances. Doing so undoubtedly gave the appearance to the investment community that Merrill Lynch mutual funds were acceptable places for an investors' money when, in fact, they were suffering the same downward performance as other similar securities.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

...For almost 23 years -- from the time he first opened his first Merrill Lynch account until his transfer of his assets in 2003 -- Dr. Kapoor intensively managed his investments and intimately understood the detail of his Merrill Lynch accounts. Whether it was the initial foray into gold coins and silver coins, his subsequent dalliance with high yield securities, his flirtation with options or his ultimate enrapture with high-tech and biotech stocks, Dr. Kapoor's accounts bear the mark of his unquenchable determination to "beat the market." Although this aggressiveness permitted Dr. Kapoor to realize outsized returns during much of the 1990s, it ultimately led to the collapse of the accounts by 2002.

Contrary to the Claim's allegations, all transactions were effected in the Claimants' accounts according to Claimants' instructions and approval, and were consistent with Claimants' investment objectives. Claimants paint a false picture of the handling of their Accounts. Between 1980, when they first transferred their investments to Merrill Lynch, until 2003, when they moved their holdings to another firm, Claimants embarked on an investment strategy that focused on rapidly appreciating investments. Dr. Kapoor declined suggestions that Claimants sell some of their investments and diversify their portfolio, as he professed confidence in his investment strategy. Indeed, in 2001 and 2002 Dr. Kapoor grew ever more aggressive, as he attempted to "time the market" and regain some of his earlier losses. Unfortunately, that strategy failed. Thus, as "new economy" stocks' performance switched in 2000 from an upward trend to a downward tumble, the accounts' value declined.

RELIEF REQUESTED

Claimants requested an award in their favor and against Respondents in the amount of \$778,000.00. At the hearing, Claimant modified their request for damages to \$566,658.00.

Respondents requested that the Panel enter an award as follows:

- a) Dismissing the Statement of Claim in its entirety without any award of damages;
- b) Awarding Respondents the costs of defense of the action, including reasonable attorneys' fees and filing costs;
- c) That the Panel order that all references to this matter be specifically ordered to be expunged from Collins' individual CRD record; and awarding Respondents such other and further relief as the Panel believes is just, equitable and proper.

OTHER ISSUES CONSIDERED & DECIDED

At the conclusion of Claimants' presentation of their case, Respondents asserted a Motion for Directed Verdict. After considering the pleadings, the evidence presented and the arguments of counsel, the Arbitration Panel denied the Motion.

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 original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

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

1. The claims asserted in this matter are dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Joseph M. Collins'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, Respondent Joseph M. Collins must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

4. 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, not specifically awarded or otherwise provided for above.

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

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	7,000.00

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Date(s), September 27-29, 2005 adjournment requested by Respondents fee = \$1,200.00
waived by the Arbitration 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:

2	Pre-hearing session(s) with Panel	x	\$1,200.00	\$	2,400.00
	August 23, 2004	1	session		
	March 15, 2005	1	session		
6	Hearing sessions	x	1,200.00	\$	7,200.00
	October 10, 2005	2	sessions		
	October 11, 2005	2	sessions		
	October 12, 2005	2	sessions		
	Total Forum Fees			\$	9,600.00

The Arbitration Panel has assessed \$4,800.00 of the forum fees to Gurbachan S. and Inderjit Kapoor and GS Kapoor MD Inc.

The Arbitration Panel has assessed \$4,800.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith, Inc.

Fee Summary

Claimants, Gurbachan S. and Inderjit Kapoor and GS Kapoor MD Inc. are jointly and severally liable for:

Initial Filing Fee	= \$	375.00
<u>Forum Fees</u>	= \$	4,800.00
Total Fees	= \$	5,175.00
<u>Less payments</u>	= \$	-1,575.00
Balance Due NASD Dispute Resolution	= \$	3,600.00

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

Member Fees	= \$	7,000.00
<u>Forum Fees</u>	= \$	4,800.00
Total Fees	= \$	11,800.00
<u>Less payments</u>	= \$	-8,000.00
Balance Due NASD Dispute Resolution	= \$	3,800.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Beatriz M. Olivera, Esq. - Public Arbitrator, Presiding Chair
James Michael Bailey - Public Arbitrator
Kevin P. Gerard, CPA - Non-Public Arbitrator

Concurring Arbitrators:

Beatriz M. Olivera

Beatriz M. Olivera, Esq.
Public Arbitrator, Presiding Chair

10-12-05

Signature Date

James Michael Bailey
Public Arbitrator

10/12/05

Signature Date

Kevin P. Gerard
Kevin P. Gerard, CPA
Non-Public Arbitrator

10-12-05

Signature Date

October 13, 2005

Date of Service (For NASD office use only)