

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Paul R. Yamshon, Paul R. Yamshon, IRA, Patricia L. Yamshon, Patricia L. Yamshon, IRA, Paul R. Yamshon TTEE and Patricia L. Yamshon TTEE of the Yamshon Family Trust U/A dtd 11/20/96, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Uwe M. Ruttke, Respondents

Case Number: 03-07273

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

James Jay Seltzer, Esq.  
Law Offices of  
James Jay Seltzer  
Emeryville, California

For Respondents:

Andrew J. Kohler, Esq.  
Merrill Lynch  
New York, New York

**CASE INFORMATION**

Statement of Claim filed: October 7, 2003

Claimants' Uniform Submission Agreement signed: October 1, 2003

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Uwe M. Ruttke: January 15, 2004

Respondent Merrill Lynch's Uniform Submission Agreement signed: March 4, 2004

**CASE SUMMARY**

Claimants asserted the following causes of action: suitability; misrepresentation and omissions of fact; negligent misrepresentation; breach of fiduciary duty; failure to supervise; breach of contract; unfair business practices; and negligence. Claimants' dispute involved investments in various securities, including but not limited to, investments in 3D Labs, AOL, Agilent, Airtouch Communications, AT&T Corp., AT&T Wireless Svs, At Home, Bristol Myers Squibb, Cable & Wireless and Centecor Inc.

Unless specifically admitted in its Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: Claimants failed to state a cause of action; waiver and estoppel; assumption of risk; ratification; statute of limitations; and failure to mitigate damages.

### **RELIEF REQUESTED**

Claimants requested:

1. Compensatory damages to be determined;
2. Attorney's fees and costs;
3. Punitive damages; and
4. Such further action deemed just and appropriate.

Respondents requested dismissal of the Statement of Claim in its entirety.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On September 7, 2004, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondent Uwe M. Ruttke did not file with NASD Dispute Resolution ("NASD-DR") a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered the Claim, is bound by the determination of the Panel on all issues submitted.

On April 20, 2006, Claimants dismissed Uwe M. Ruttke with prejudice.

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

### **AWARD**

On May 1, 2006, the parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing, and upon motion of both parties for entry of an award, the written stipulation thereto, the Panel grants the motion and enters this Award granting the following relief:

1. Claimants have dismissed all claims with prejudice against Respondents.
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Uwe M. Ruttke's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Uwe M. Ruttke 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. All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$250.00
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#### **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 is a party and the following fees are assessed:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,200.00
Total Member Fees	= \$4,450.00

**Forum Fees and Assessments**

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

(1) Pre-hearing conference session with a single arbitrator  
@ \$450.00/session = \$450.00

Pre-hearing conference: March 21, 2006 1 session

(3) Pre-hearing conference sessions with the Panel  
@ \$1,000.00/session = \$3,000.00

Pre-hearing conferences: June 6, 2005 1 session  
July 26, 2005 1 session  
June 21, 2006 1 session

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**Total Forum Fees = \$3,450.00**

1. The Panel assessed \$1,225.00 of the forum fees jointly and severally to Claimants Paul R. Yamshon, Paul R. Yamshon, IRA, Patricia L. Yamshon, Patricia L. Yamshon, IRA, Paul R. Yamshon TTEE and Patricia L. Yamshon TTEE of the Yamshon Family Trust U/A dtd 11/20/96.
2. The Panel assessed \$1,225.00 of the forum fees jointly and severally to Respondents Merrill Lynch and Uwe M. Rutke.
3. The Panel waived the \$1,000.00 forum fee in connection with the pre-hearing conference held June 6, 2005.

**Fee Summary**

1. Claimants Paul R. Yamshon, Paul R. Yamshon, IRA, Patricia L. Yamshon, Patricia L. Yamshon, IRA, Paul R. Yamshon TTEE and Patricia L. Yamshon TTEE of the Yamshon Family Trust U/A dtd 11/20/96 are charged jointly and severally with the following fees and costs:

Initial Filing Fee = \$ 250.00

Forum Fees = \$ 1,225.00

Total Fees = \$ 1,475.00

Less Payments = \$(1,250.00)

**Balance Due NASD-DR = \$ 225.00**

2. Respondent Merrill Lynch is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
<u>Less Payments</u>	<u>= \$( 4,450.00)</u>
<b>Balance Due NASD-DR</b>	<b>= \$ 0.00</b>

3. Respondents Merrill Lynch and Uwe M. Ruttko are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,225.00
<u>Less Payments</u>	<u>= \$( 0.00 )</u>
<b>Balance Due NASD-DR</b>	<b>= \$ 1,225.00</b>

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

**PARTIES' SIGNATURES**

Claimants, Paul R. Yamshon, Paul R. Yamshon, IRA, Patricia L. Yamshon, Patricia L. Yamshon, IRA, Paul R. Yamshon TTEE and Patricia L. Yamshon TTEE of the Yamshon Family Trust U/A dtd 11/20/96

By: \_\_\_\_\_  
James J. Seltzer, Esq.

\_\_\_\_\_  
Signature Date

Respondents, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Uwe M. Ruttko

By: \_\_\_\_\_  
Andrew J. Kohler, Esq.

\_\_\_\_\_  
Signature Date

2. Respondent Merrill Lynch is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
Less Payments	= \$( 4,450.00)
<b>Balance Due NASD-DR</b>	<b>= \$ 0.00</b>

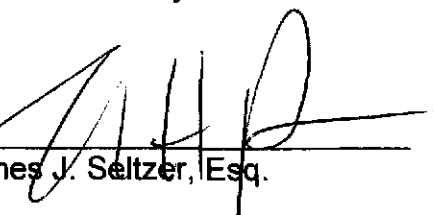
3. Respondents Merrill Lynch and Uwe M. Ruttke are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,225.00
Less Payments	= \$( 0.00)
<b>Balance Due NASD-DR</b>	<b>= \$ 1,225.00</b>

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

**PARTIES' SIGNATURES**

Claimants, Paul R. Yamshon, Paul R. Yamshon, IRA, Patricia L. Yamshon, Patricia L. Yamshon, IRA, Paul R. Yamshon TTEE and Patricia L. Yamshon TTEE of the Yamshon Family Trust U/A dtd 11/20/96

By:   
James J. Seltzer, Esq.

June 28, 2006  
Signature Date

Respondents, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Uwe M. Ruttke

By: \_\_\_\_\_  
Andrew J. Kohler, Esq.

\_\_\_\_\_  
Signature Date

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Member Fees	= \$ 4,450.00
<u>Less Payments</u>	= \$( 4,450.00 )
<b>Balance Due NASD-DR</b>	<b>= \$ 0.00</b>

3. Respondents Merrill Lynch and Uwe M. Ruttke are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,225.00
<u>Less Payments</u>	= \$( 0.00 )
<b>Balance Due NASD-DR</b>	<b>= \$ 1,225.00</b>

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

**PARTIES' SIGNATURES**

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By: \_\_\_\_\_

James J. Seltzer, Esq.

\_\_\_\_\_  
Signature Date

Respondents, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Uwe M. Ruttke

By: \_\_\_\_\_

*Andrew J. Kohler*  
Andrew J. Kohler, Esq.

*6/28/06*  
\_\_\_\_\_  
Signature Date

**ARBITRATION PANEL**

Keely D. Parr, Esq.	-	Public Arbitrator, Presiding Chair
Fred D. Butler, J.D.	-	Public Arbitrator
Gene S. Evenskaas	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Keely D. Parr, Esq.  
Chair, Public Arbitrator

\_\_\_\_\_  
Signature Date

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Fred D. Butler, J.D.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Gene S. Evenskaas  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service



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Keely D. Parr, Esq.	-	Public Arbitrator, Presiding Chair
Fred D. Butler, J.D.	-	Public Arbitrator
Gene S. Evenskaas	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Keely D. Parr, Esq.  
Chair, Public Arbitrator

07-11-06  
Signature Date

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Fred D. Butler, J.D.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Gene S. Evenskaas  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

7/13/06  
Date of Service

**ARBITRATION PANEL**

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Fred D. Butler, J.D.	-	Public Arbitrator
Gene S. Evenskaas	-	Non-Public Arbitrator

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Keely D. Parr, Esq.  
Chair, Public Arbitrator

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Signature Date

  
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Fred D. Butler, J.D.  
Public Arbitrator

6/21/06  
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Signature Date

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Gene S. Evenskaas  
Non-Public Arbitrator

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Signature Date

7/13/06  
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Date of Service

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Signature Date

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Fred D. Butler, J.D.  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Gene S. Evenskaas  
Non-Public Arbitrator

6/29/06  
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Signature Date

7/13/06  
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Date of Service