

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 04-01455

Robert Granoff and Karen Granoff Claimants v. Merrill Lynch, Pierce, Fenner and Smith, Inc.,
Respondent.

ATTORNEYS:

For Claimants, Robert Granoff and Karen Granoff ("Claimants") appeared Wm. Jemison Mims, Jr., Esq., of the firm Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A. Pensacola, FL.

For Respondent, Merrill Lynch, Pierce, Fenner and Smith, Inc., ("Respondent") appeared A. Inge Selden, III, Esq., of the firm Maynard, Cooper & Gale, P.C. Birmingham, AL.

NATURE OF DISPUTE: Customers vs. Member.

DATE FILED: March 3, 2004.

CASE SUMMARY: Claimants alleged that they suffered financial damages as a result of Respondent's fraudulent analyst reports, which recommended the purchase of, and set target prices for the common stock of companies without any reasonable factual basis. Claimants further alleged breach of fiduciary duty, common law fraud, fraudulent misrepresentation, fraudulent inducement, negligence, negligent misrepresentation, and gross negligence. Claimants' claim involved Doubleclick Inc Del Com stock.

Claim Data

Claim: \$20,915.00
Punitive: Unspecified
Interest: Unspecified
Attorney Fees: Unspecified
Filing Fees: Unspecified
Other: Unspecified

Award Data

Award: \$.00
Punitive: \$.00
Interest: \$.00
Attorney Fees: \$.00
Filing Fees: \$.00
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of Claimants are dismissed in their entirety. 2) All requests for punitive damages are denied. 3) All requests for interest are denied. 4) All request for attorney fees are denied. 5) All other relief requests are denied. 6) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimants deposited previously.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

OTHER ISSUES: ARBITRATOR'S REPORT: *see attached.*

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Robert F. Saint-Aubin, Esq. - Sole-Public Arbitrator

AFFIRMATION

I, Robert F. Saint-Aubin, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Robert F. Saint-Aubin, Esq.

8-19-09
Signature Date

September 28, 2004
Date of Service (For NASD-DR office use only)

National Association of Securities Dealers

In re the Arbitration of

Robert Granoff and
Karen Granoff, Claimants

v.

NASD Claim No.: 04-01455

Merrill Lynch Pierce Fenner &
Smith, Inc., Respondents

Preliminary matters

Claimants, resident in California, elected to utilize Florida counsel to bring their claim.

Claimants elected to bring their claim against Merrill Lynch Pierce Fenner & Smith Incorporated.

Claimants elected not to include Henry Blodget as a Respondent.

Claimants elected not to include Kerry D. Givant, their registered representative, as a Respondent.

Claimants elected to have the case deemed a simplified case to be decided on the basis of the party filings.

Claimants elected to base their entire case on two affidavits. Their affidavit and on the affidavit of Mr. Dinallo.

Claimants affidavit paragraph 4, in part, asserts "We further relied upon . . . his ratings on CNN."

Mr. Dinallo's affidavit was prepared for an unrelated administrative proceeding. The Dinallo affidavit and the attachments, while fully reviewed by the arbitrator, were given the weight in this proceeding that such an affidavit deserves.

Respondent relies on the affidavit of Kerry Givant. That affidavit asserts that the Doubleclick transactions were all unsolicited, initiated by Claimants without input from Respondent.

Respondent's request for discovery is denied. The limited

discovery ordinarily allowed in an NASD proceeding prior to an evidentiary hearing is not appropriate in a Simplified Proceeding. Claimant's Motion to Strike Respondent's Request for Documents is Granted.

Respondent's Motion to Dismiss is denied. Simplified Arbitration is not a forum for motion practice.

Respondent's Motion to Strike the Dinallo Affidavit is denied. In a Simplified Proceeding the parties are entitled to present whatever documents they deem relevant and appropriate. The Panel will give the documents the appropriate weight and credibility. Simplified Arbitration is not a forum for motion practice.

Panel Award

The panel finds that Claimant has not established that Respondent is responsible for Claimant's asserted losses from the purchase and sale of Doubleclick during the technology boom, bubble and bust. Respondent relied on CNN but apparently failed to heed the widely proclaimed irrational exuberance warnings with respect to technologies rampant during the same period. Claimants did not assert that Respondent's account representatives made any representation to Claimants with respect to the stock at issue.

Forum Fees

All unpaid forum fees are assessed against Respondent.

Attorney Fees and Costs

The requests for attorney fees and costs are denied.

By 
Robert F. Saint-Aubin, Neutral