

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

David I. H. Park
Juhnie Y. Park
Park Family Dentistry

Case Number: 04-01911

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Douglas Hornberger
Anthony Cuomo
Jeffrey Lane

Hearing Site: Raleigh, North Carolina

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

REPRESENTATION OF PARTIES

Claimants, David I. H. Park, Juhnie Y. Park and Park Family Dentistry, hereinafter collectively referred to as "Claimants", were represented by J. Anthony Penry, Esq., Taylor, Penry, Rash & Riemann, PLLC, Raleigh, North Carolina.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Douglas Hornberger ("Hornberger"), Anthony Cuomo ("Cuomo") and Jeffrey Lane ("Lane") hereinafter collectively referred to as "Respondents", were represented by Alan M. Wolper, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on March 22, 2004.

Claimants signed the Uniform Submission Agreement on March 2, 2004.

Statement of Answer filed by Respondents on July 8, 2004.

Counterclaim filed by Respondent Merrill Lynch on July 8, 2004.

A representative of Respondent Merrill Lynch signed the Uniform Submission Agreement on April 27, 2004.

Respondent Hornberger signed the Uniform Submission Agreement on April 6, 2004.

Respondent Cuomo signed the Uniform Submission Agreement on April 14, 2004.

Respondent Lane signed the Uniform Submission Agreement on April 6, 2004.

Claimant filed a Reply to Respondent Merrill Lynch's Counterclaim on August 2, 2004.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action, among others: negligence, breach of fiduciary duty, fraud, breach of contract, and violation of N.C. Gen. Stat.

§ 78A. The causes of action relate to the purchase and sale of Microsoft common stock and various unspecified technology stocks.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: assumption of the risk; contributory negligence; authorization; ratification; Claimant's claims are barred by the doctrines of laches, unclean hands, set off and estoppel; waiver; failure to use requisite due care; Claimant's claims are barred by the statute of limitations; failure to mitigate damages; and failure to state a claim upon which relief may be granted.

Respondent Merrill Lynch, in its Counterclaim, asserted causes of action for: breach of contract and *quantum meruit*.

Unless specifically admitted in their Reply to Respondent Merrill Lynch's Counterclaim, Claimants denied the allegations set forth and asserted the following defenses, among others: failure to state a claim upon which relief may be granted and Respondent Merrill Lynch's counterclaim is barred by the doctrines of unclean hands, waiver and estoppel.

RELIEF REQUESTED

Claimant in the Statement of Claim requested:

Compensatory Damages	\$ 1,000,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified

Respondents requested that Claimants' Statement of Claim be rejected in its entirety and that they be awarded costs.

In its Counterclaim, Respondent Merrill Lynch requested:

Compensatory Damages	\$ 82,711.86
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other costs	amount unspecified

Claimants requested that Respondent Merrill Lynch's Counterclaim be dismissed and that they be awarded costs of defending the Counterclaim.

OTHER ISSUES CONSIDERED AND DECIDED

On January 30, 2004, Wake County Superior Court issued an order directing this dispute to arbitration.

At the hearing on the merits, Respondents made an oral motion for directed verdict and motion to dismiss, which the Arbitration Panel (the "Panel") denied.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety;
2. Respondent Merrill Lynch's counterclaim is denied in its entirety;
3. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondents Hornberger, Cuomo and Lane's registration records maintained by the CRD with the understanding that, pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Hornberger, Cuomo and Lane must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
4. The parties shall bear their respective costs, except as Fees are specifically addressed below;
and
5. Any and all relief not specifically addressed herein is denied in its entirety.

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
Counter claim filing fee	= \$ 1,000.00

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, Respondent Merrill Lynch is a party.

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

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:

One (1) Pre-hearing session with Panel @ \$ 1,200.00 = \$ 1,200.00
Pre-hearing conference: October 28, 2004 1 session

Ten (10) Hearing sessions @ \$ 1,200.00 = \$ 12,000.00

Hearing Dates: June 1, 2005 2 sessions
June 2, 2005 2 sessions
June 3, 2005 2 sessions
June 8, 2005 2 sessions
June 9, 2005 2 sessions

Total Forum Fees = \$ 13,200.00

1. The Panel has assessed \$ 6,600.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$ 6,600.00 of the forum fees to Respondent Merrill Lynch.

Fee Summary

1. Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 6,600.00
Total Fees	= \$ 6,975.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 5,275.00

2. Respondent Merrill Lynch is assessed and shall pay:

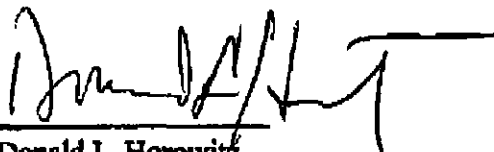
Filing Fee	= \$ 1,000.00
Member Fees	= \$ 7,000.00
Forum Fees	= \$ 6,600.00
Total Fees	= \$ 14,600.00
Less payments	= \$ 8,750.00
Balance Due NASD Dispute Resolution	= \$ 5,850.00

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

ARBITRATION PANEL

Donald L. Horowitz	-	Public Arbitrator, Presiding Chairperson
Leonard E. Benade	-	Public Arbitrator, Panelist
Daniel W. Desmond, VP	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Donald L. Horowitz
Public Arbitrator, Presiding Chairperson

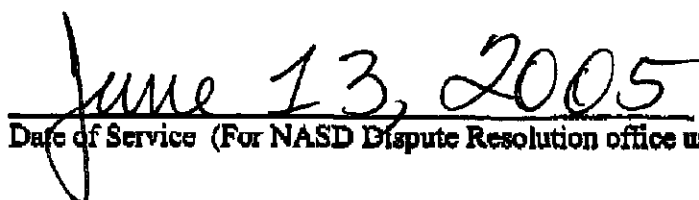

Signature Date

Leonard E. Benade
Public Arbitrator, Panelist

Signature Date

Daniel W. Deamond, VP
Non-Public Arbitrator, Panelist

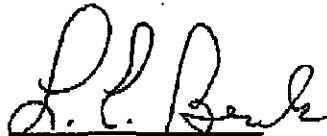
Signature Date


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

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Public Arbitrator, Presiding Chairperson

Signature Date



Leonard E. Benade
Public Arbitrator, Panelist

6/10/05
Signature Date

Daniel W. Desmond, VP
Non-Public Arbitrator, Panelist

Signature Date

June 13, 2005
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