

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Kenneth R. Polo (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. (Respondent)

Case Number: 04-02547

Hearing Site: Newark, New Jersey

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Claimant Kenneth R. Polo hereinafter referred to as "Claimant" appeared *pro se*. Previously represented by: Adam S. Doner, Esq., Gordon & Doner, P.A., Palm Beach Gardens, FL.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. hereinafter referred to as "Respondent": William R. Wildman, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, GA..

**CASE INFORMATION**

Statement of Claim filed on or about: April 7, 2004.

Claimant signed the Uniform Submission Agreement: April 7, 2004.

Statement of Answer filed by Respondent on or about: July 7, 2004.

Respondent signed the Uniform Submission Agreement: May 12, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: fraud; negligence; breach of fiduciary duty; failure to supervise; misrepresentations and omissions; and violation of Blue Sky Laws. The causes of action relate to various shares of common stock.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in excess of \$140,000.00; well-managed portfolio damages; costs, expenses, and disbursements, including reasonable attorneys' fees and expert witness fees; punitive damages; and such other relief as the Panel deems just and proper.

Respondent requested that the Panel dismiss Claimant's Statement of Claim and that the forum fees be borne by the Claimant.

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

On or about January 19, 2005, Respondent made a motion to dismiss and a motion for sanctions. On or about May 3, 2005, NASD Dispute Resolution was notified that the Panel unanimously agreed to grant Respondent's motion to dismiss/sanctions. The Panel also considered and denied Respondent's request for attorneys' fees and costs.

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.

### **AWARD**

After considering the pleadings, the motions and all responses thereto, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety.
2. 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 = \$300.00

#### **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 = \$1,700.00  
Pre-hearing process fee = \$ 750.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: September 23, 2004 1 session	
Total Forum Fees	= \$1,125.00

1. The Panel has assessed \$1,125.00 of the forum fees against Claimant.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$1,125.00</u>
Total Fees	= \$1,425.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent is solely liable for:

<u>Member Fees</u>	<u>= \$2,450.00</u>
Total Fees	= \$2,450.00
<u>Less payments</u>	<u>= \$2,450.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Arthur C. Ramirez	-	Public Arbitrator, Presiding Chairperson
Martin A. Edelstein	-	Public Arbitrator
Rick F. Suppa	-	Non-Public Arbitrator

**Concurring Arbitrators' Signature(s)**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.



Arthur C. Ramirez  
Public Arbitrator, Presiding Chairperson

5/10/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Martin A. Edelstein  
Public Arbitrator

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Signature Date

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Rick F. Suppa  
Non-Public Arbitrator

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Signature Date

May 12, 2005  
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Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

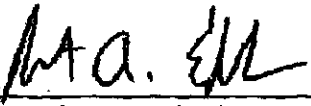
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Non-Public Arbitrator

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ATT: SUZANNE E. GAGAN

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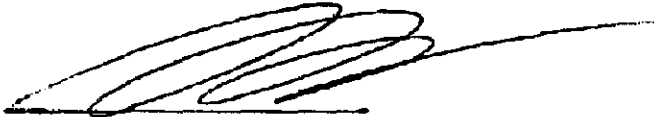
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