

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Annie Malone Foundation, Inc. and
Annie Malone Children and Family Service Center, Inc.
Claimants,

Case Number: - 04-03800

v.

Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Shariq Mansuri,
Respondents

Hearing Site: St. Louis, Missouri

NATURE OF THE DISPUTE

Customers vs. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Annie Malone Foundation, Inc. ("Malone Foundation") and Annie Malone Children and Family Service Center, Inc. ("Malone Service Center"), *hereinafter collectively referred to as "Claimants"*: Joseph D. Sheppard, III, Esq. and Gary R. Long, Esq. of the law firm Carnahan, Evans, Cantwell & Brown, P.C., located in Springfield, Missouri.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Shariq Mansuri ("Mansuri"), *hereinafter collectively referred to as "Respondents"*: D. Michael O'Neil, Esq. and David Newsome, Esq. of the law firm Day Edwards Propester & Christensen, P.C., located in Oklahoma City, Oklahoma.

CASE INFORMATION

Statement of Claim filed on or about: May 27, 2004

Malone Foundation signed the Uniform Submission Agreement: March 24, 2004

Malone Service Center signed the Uniform Submission Agreement: March 26, 2004

Statement of Answer jointly filed by Respondents, Merrill Lynch and Mansuri, on or about: July 23, 2004

Respondent Merrill signed the Uniform Submission Agreement: September 13, 2004

Respondent Mansuri signed the Uniform Submission Agreement: September 14, 2004

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, negligence, failure to supervise, breach of fiduciary duty, fraud, churning, suitability, omission and facts and violation of the Missouri Securities Act. The causes of action relate to unspecified securities, which Claimants believed to be speculative and/or volatile and unsuitable to Claimants' investment needs and objectives.

Unless specifically admitted in its Answer, Respondents Merrill Lynch and Mansuri denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants fail to state a claim upon which relief can be granted;

2. Claimants' claims are barred because Merrill Lynch had a good faith basis for its research opinions;
3. Claimants' claims are barred because the risks inherent in the investments at issue were fully disclosed or known to them and they assumed those risks;
4. Claimants' claims are barred because they failed to mitigate their damages;
5. Claimants' claims are barred by the applicable statute of limitations;
6. Claimants' claims are barred because they suffered no damages by reason of the acts complained of in the Statement of Claim; Claimants' alleged damages, if any, were proximately caused by their own conduct; and
7. Claimants do not have a private right of action for alleged violation of NASD Rules.

RELIEF REQUESTED

Claimants requested \$2 million to \$5 million in compensatory damages; \$8 million in punitive damages; pre- and post-judgment interest; all costs; and for such other and further relief as the Panel deems just and proper.

Respondents requested for Panel to (1) deny and dismiss the Statement of Claim in its entirety; (2) expunge any reference to the claim from Respondent Mansuri's record; and (3) assess the costs and fees incurred in this action against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

In a letter dated August 26, 2005, Claimants voluntarily dismissed Respondent Shariq Mansuri from this proceeding.

On September 20, 2005, the Panel heard argument from Respondents' counsel and testimony from Respondent Mansuri regarding the merits of the expungement to Mansuri's U-4. The Panel considered the Statement of Claim and Answer of both Merrill Lynch and Mansuri. Of particular interest were Mansuri's PDA notes and the forensics report of BKD Computer Forensics, which noted that Mansuri's PDA had not been altered in any way. Or, stated in a different way, Mansuri had not amended or deleted any text from his PDA from the time he first entered the text. Mansuri's PDA notes indicate that he admonished Claimants to abandon its concentration of high tech stocks and move monies into cash. Additionally, evidence was adduced showing that Mansuri presented a Power Point presentation regarding Merrill Lynch's Consults Program. The Power Point presentation is referenced in Claimants' minutes.

Moreover, Claimants' minutes demonstrate that it closely tracked and compared the returns of its funds held by Merrill Lynch versus its accounts held at Bank of America.

The Panel was most persuaded by the Stipulation dated September 19, 2005 in which it is stated that:

It is stipulated and agreed by and between the undersigned parties by their respective attorneys that the facts in this case would support the requisite finding for expungement for Shariq Mansuri under NASD Rule 2130.

In light of the evidence proving:

- A. The sophistication of the Claimants (thereby refuting arguments of suitability);

- B. The close monitoring of Claimants' accounts (thereby undercutting arguments of unauthorized trades and churning);
- C. The express admonition of Respondents Merrill Lynch and Mansuri to diversity (thereby refuting arguments of failure to diversity and over-concentration); and
- D. The overall level of due diligence Claimants conducted regarding the performance of its accounts (thereby undercutting arguments of misrepresentation and omission of facts).

The Panel finds that the claim, allegation or information against Respondent Shariq Mansuri is factually impossible or clearly erroneous and therefore, finds Shariq Mansuri's request for expungement suitable and appropriate.

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 parties' submissions and representations, the undersigned arbitrators order as follows:

- 1.) Any and all claims filed by Claimants Annie Malone Foundation, Inc. and Annie Malone Children and Family Service Center, Inc. are dismissed with prejudice.
- 2.) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Shariq Mansuri's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Mansuri must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact: The claim, allegation, or information is factually impossible or clearly erroneous.

- 3.) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

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	= \$ 600.00
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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 event(s) giving rise to the dispute. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00

Forum Fees and Assessments

The 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 arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Seven (7) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 3,150.00

Pre-hearing conferences:	May 12, 2005	1 session
	June 9, 2005	1 session
	July 5, 2005	1 session
	July 19, 2005	1 session
	July 20, 2005	1 session
	August 15, 2005	1 session
	August 23, 2005	1 session

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00

Pre-hearing conference:	November 19, 2004	1 session
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One (1) In-person Pre-hearing session x \$1,200.00 = \$ 1,200.00

Pre-hearing date:	September 20, 2005	1 session
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Total Forum Fees = \$ 5,550.00

Pursuant to NASD Dispute Resolution Code of Arbitration Procedure Rule 10306(c):

1. Forum fees in the amount of \$2,775.00 are to be paid by Claimants, Malone Foundation and Malone Service Center, jointly and severally; and
2. Forum fees in the amount of \$2,775.00 is to be solely paid by Respondent Merrill Lynch.

Fee Summary

Claimants, Annie Malone Foundation, Inc. and Annie Malone Children and Family Service Center, Inc., are hereby jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 2,775.00
<u>Total Fees</u>	= \$ 3,375.00
<u>Less payments</u>	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 1,575.00

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

Member Fees	= \$10,000.00
Forum Fees	= \$ 2,775.00
<u>Total Fees</u>	= \$12,775.00

Less payments	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$ 2,775.00

All balances are due to NASD Dispute Resolution.

ARBITRATION PANEL

Leah M. Balk-Teitelbaum, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard L. Puhl	-	Public Arbitrator
Raymond Przybylowski	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Leah M. Balk-Teitelbaum, Esq.

Leah M. Balk-Teitelbaum, Esq.
Public Arbitrator, Presiding Chair

10/27/05

Signature Date

/s/ Richard L. Puhl

Richard L. Puhl
Public Arbitrator

10/27/05

Signature Date

/s/ Raymond Przybylowski

Raymond Przybylowski
Non-Public Arbitrator

10/30/05

Signature Date

10/28/05

Date of Service (For NASD office use only)

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Less payments	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$ 2,775.00

All balances are due to NASD Dispute Resolution.

ARBITRATION PANEL

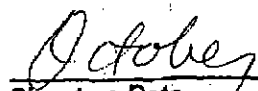
Leah M. Balk-Tettelbaum, Esq.
Richard L. Puhl
Raymond Przybylowski

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



Leah M. Balk-Tettelbaum, Esq.
Public Arbitrator, Presiding Chair

 27, 2005
Signature Date

Richard L. Puhl
Public Arbitrator

Signature Date

Raymond Przybylowski
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

Less payments

= \$10,000.00

Balance Due NASD Dispute Resolution

= \$ 2,775.00

All balances are due to NASD Dispute Resolution.

ARBITRATION PANEL

Leah M. Balk-Tittelbaum, Esq.

- Public Arbitrator, Presiding Chairperson

Richard L. Puhl

- Public Arbitrator

Raymond Przybylowski

- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Leah M. Balk-Tittelbaum, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Richard L. Puhl
Public Arbitrator

Signature Date


Raymond Przybylowski
Non-Public Arbitrator

10-30-2005

Signature Date

Date of Service (For NASD office use only)