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

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In the Matter of the Arbitration Between:

Name of the Claimant

Clemance O. Hanania, individually and as  
Trustee of the Clemance Okla Hanania  
Living Trust

Case Number: 04-04209

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Kay Joseph  
J. Michael Joseph

Hearing Site: Orlando, Florida

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

**REPRESENTATION OF PARTIES**

For Clemance O. Hanania, individually and as Trustee of the Clemance Okla Hanania Living Trust ("Hanania"), hereinafter referred to as "Claimant": R. Kyle Gavin, Esq. and Katie Dearing, Esq., Liles, Gavin, Cosantino & Murphy, Jacksonville, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), Kay Joseph ("K. Joseph") and J. Michael Joseph ("M. Joseph") hereinafter referred to as "Respondents": Thomas A. Farnen, Esq. and Bradley Cline Esq., Sutherland Asbill & Brennan, LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: June 15, 2004.

Claimant Hanania signed the Uniform Submission Agreement: June 13, 2004.

Respondents' Statement of Answer filed on or about: August 23, 2004.

Respondent MLPFS signed the Uniform Submission Agreement: July 19, 2004.

Respondent K. Joseph signed the Uniform Submission Agreement: August 16, 2004.

Respondent M. Joseph signed the Uniform Submission Agreement: August 16, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) violation of Florida's Blue Sky Laws; 2) negligence; 3) negligent misrepresentation; 4) fraud; 5) breach of contract; 6) breach of fiduciary duty; and, 7) failure to supervise. The causes of action relate to Claimant's investments in various telecommunications and technology stocks, including, but not limited to, the following: AT&T, Lucent, Medicis Pharmaceuticals and Bellsouth Corporation.

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

**RELIEF REQUESTED**

Claimant requested: 1) compensatory damages of approximately \$500,000.00; 2) punitive damages; 3) costs; 4) interest, including pre-judgment interest; and, 5) such other relief as the Panel deemed just and proper.

Respondents requested: 1) dismissal of the Statement of Claim, in its entirety; 2) that the Panel assess all forum fees and costs against Claimant; 3) expungement of the NASD Central Registration Depository ("CRD") records of Respondents K. Joseph and M. Joseph; and, 4) an award of costs and attorneys' fees incurred in connection with this matter pursuant to section 517.211(6) of the Florida Statutes in a court of competent jurisdiction.

**OTHER ISSUES CONSIDERED AND DECIDED**

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, evidence and testimony presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent MLPFS is liable on the claim of failure to supervise and shall pay to Claimant compensatory damages in the amount of \$100,000.00, interest specifically excluded, and shall pay to Claimant the sum of \$7872.00 representing the cost of Claimant's expert witness.

Respondent MLPFS is found not liable on all other causes of action asserted in the Statement of Claim.

The Panel dismisses, with prejudice, all claims against Respondents K. Joseph and M. Joseph.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondents K. Joseph's and M. Joseph's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 04-16, Respondents K. Joseph and M. Joseph must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The allegations against Respondent K. Joseph are false and the allegations against Respondent M. Joseph are factually impossible.

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.

As to the issue of entitlement only, Claimant's requests for attorneys' fees are granted pursuant to Chapter 517.301, Florida Statutes, in an amount to be determined by a court of competent jurisdiction.

Any and all requests for relief not specifically addressed herein, including Claimant's request for punitive damages, are 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 are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent MLPFS is a party and a member firm.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

#### **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 the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conferences: November 15, 2004 1 session	

Eight (8) Hearing sessions with the Panel @ \$1125.00/session = \$ 9,000.00

Hearing Dates:                      September 27, 2005    2 sessions  
   September 28, 2005    2 sessions  
   September 29, 2005    2 sessions  
   September 30, 2005    2 sessions

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Total Forum Fees = \$10,125.00

The Panel has assessed the total forum fees of \$10,125.00 to Respondent MLPFS.

### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

### Fee Summary

Claimant is solely liable for:

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

Respondent MLPFS is solely liable for:

<u>Member Fees</u>	= \$ 5,200.00
<u>Forum Fees</u>	= \$10,125.00
<u>Total Fees</u>	= \$15,325.00
<u>Less payments</u>	= \$ 5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$10,125.00

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

### ARBITRATION PANEL

Michael S. Hill  
Pasquale Anthony Mercurio, MBA  
Noel K. Evans, Esq.

Non-Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Michael S. Hill  
Non-Public Arbitrator, Presiding Chairperson

October 6, 2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Pasquale Anthony Mercurio, MBA  
Public Arbitrator

October 6, 2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Noel K. Evans, Esq.  
Public Arbitrator

October 6, 2005  
Signature Date

October 7, 2005  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 04-04209

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Concurring Arbitrators' Signatures



Michael S. Hill

Non-Public Arbitrator, Presiding Chairperson

10/6/05

Signature Date

Pasquale Anthony Mercurio, MBA  
Public Arbitrator

Signature Date

Noel K. Evans, Esq.  
Public Arbitrator

Signature Date

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

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Michael S. Hill  
Non-Public Arbitrator, Presiding Chairperson

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

Pasquale Anthony Marcurio

Pasquale Anthony Marcurio, MBA  
Public Arbitrator

600711 Jan 2005

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

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Noel K. Evans, Esq.  
Public Arbitrator

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Signature Date

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

NASD Dispute Resolution

Arbitration No. 04-04209

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Concurring Arbitrators' Signatures

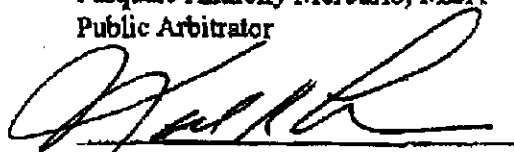
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Michael S. Hill

Non-Public Arbitrator, Presiding Chairperson

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Signature Date

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Pasquale Anthony Mercurio, MBA  
Public Arbitrator

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



Noel K. Evans, Esq.  
Public Arbitrator

10/6/05  
Signature Date

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