

**STIPULATED AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants

James E. Latta and Charlotte Latta, individually, and on behalf of the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Profit Sharing Plan and Trust, the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Money Purchase Pension Plan Trust and their IRAs; Lucinda Koerner and Ronald Koerner, individually, and on behalf of Caitlyn L. Koerner and Joshua A. Koerner; Shelia K. Schlifkin and Earl R. Schlifkin, individually, and on behalf of their IRAs and retirement plans; Tracy S. Pavillard and Tamela Pavillard, individually, and on behalf of their IRAs; and Daniel C. Jonuska individually, and on behalf of his IRA

v.

04-07139  
Denver, Colorado

Respondent

Deepak D. Raj

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Nature of Dispute: Customers v. Associated Person

**REPRESENTATION OF PARTIES**

James E. Latta and Charlotte Latta, individually, and on behalf of the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Profit-Sharing Plan and Trust, the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Money Purchase Pension Plan Trust and their IRAs; Lucinda Koerner and Ronald Koerner, individually, and on behalf of Caitlyn L. Koerner and Joshua A. Koerner; Shelia K. Schlifkin and Earl R. Schlifkin, individually, and on behalf of their IRAs and retirement plans; Tracy S. Pavillard and Tamela Pavillard, individually, and on behalf of their IRAs; and Daniel C. Jonuska, individually, and on behalf of his IRA, hereinafter referred to as ("Claimants") were represented by Kenneth B. Siegel, Esq., Sherman and Howard, LLC, Denver, Colorado.

Deepak D. Raj, "Respondent" or "Raj," was represented by Frances J. Earley, Esq., Schulte Roth & Zabel, LLP, New York City, New York.

### **CASE INFORMATION**

The Statement of Claim was filed on or about July 28, 2003.

The Uniform Submission Agreement of Claimant, Daniel C. Jonuska, individually, and on behalf of his IRA, was signed on or about July 17, 2003. The Uniform Submission Agreement of Claimants, Shelia K. Schlifkin and Earl R. Schlifkin, individually, and on behalf of their IRAs and retirement plans, was signed on or about July 20, 2003. The Uniform Submission Agreement of Claimants, James E. Latta and Charlotte Latta, individually, and on behalf of the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Profit Sharing Plan and Trust Tracy S. Pavillard and Tamela Pavillard, individually, and on behalf of their IRAs were signed on or about July 21, 2003. The Uniform Submission Agreement of Claimants, the Highland Ranch Center for Aesthetic and Maxillofacial Surgery P.C. Money Purchase Pension Plan Trust and their IRAs, and Lucinda Koerner and Ronald Koerner, individually, and on behalf of Caitlyn L. Koerner and Joshua A. Koerner, were signed on or about August 5, 2003.

Respondent, Deepak D. Raj, did not file a Statement of Answer.

Respondent, Deepak D. Raj's Motion for Expungement was filed on or about October 18, 2004.

Claimants, filed a Response to Raj's Motion for Expungement on or about November 24, 2004.

### **CASE SUMMARY**

Claimants, in the underlying matter, asserted causes of action including the following: breach of contract; negligence; failure to supervise; statutory and common law fraud; violation of the Colorado Consumer Protection Act; and breach of fiduciary duty. The causes of action, in the underlying matter, related to Claimants' allegation that Respondents failed to disclose conflicts of interest relating to their improper relationship with Merrill Lynch investment banking clients and the subsequent misleading and fraudulent reports issued by the Merrill Lynch research analysts. As a result of these non-disclosures, Claimants alleged that they were not given accurate financial analysis in holdings such as InfoSpace, ICGE and Tyco, which were later purchased for their accounts. Claimants alleged that because of the unsuitable advice provided by Respondents, non-disclosures and Respondents' disregard of the concept of asset allocation and diversification, Claimants suffered substantial losses in their accounts.

### **RELIEF REQUESTED**

Claimants, in the underlying matter, requested an award in the amount of:

Actual/Compensatory Damages	\$5,000,000.00
Punitive/Exemplary Damages	Unspecified

Interest	Unspecified
Attorney's Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent, Raj, requested that the claims asserted against them be dismissed in their entirety, and that the panel recommend that all references to this matter be expunged from his CRD record.

### **OTHER ISSUES CONSIDERED & DECIDED**

This case was severed from Case No. 03-05515, where Respondent, Deepak D. Raj, requested, and the panel granted, in an Order in the underlying case, dated August 1, 2004, an expungement of Deepak D. Raj's CRD record. In its Order, the panel specified the following:

1. Dismissal with prejudice of the claims against Respondent, Deepak D. Raj;
2. That NASD Dispute Resolution sever Respondent, Deepak D. Raj's request for expungement;
3. That NASD Dispute Resolution establish a new case, with a new case number, and with a caption as set forth above;
4. That the panel on the underlying case will be assigned to the new case;
5. That Deepak D. Raj, pay a \$250.00 filing fee within 30 days in order for NASD Dispute Resolution to process the expungement;
6. That the provisions of Rules 10314, 10321, and 10308 of the NASD Code of Arbitration Procedure do not apply; and
7. That the customer does not have to file an answer in this new claim.

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the motion to sever and enter a stipulated award directing the expungement of the Respondent, Deepak D. Raj's registration records, and after reviewing the pleadings and files

contained herein, but without making any findings of fact or conclusions of law, the undersigned arbitrators orders as follows:

1. The Panel recommends the expungement of all references to the above-captioned arbitration case and arbitration case # 03-05515 from Respondent, Deepak D. Raj's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Claimant, Deepak D. Raj, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages, are denied with prejudice; and
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

#### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Associated Person's filing fee = \$ 250.00

#### **Fee Summary**

Respondent, Deepak D. Raj, is liable for:

<u>Initial Filing Fee</u>	= \$ 250.00
<u>Total Fees</u>	= \$ 250.00
<u>Less payments</u>	= \$ 250.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

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

**ARBITRATION PANEL**

Deanna M. Tuley, Esq. - Public Arbitrator, Presiding Chair  
Michael J. Norton - Public Arbitrator  
Gerald K. Moore- Non-Public Arbitrator

Concurring Arbitrators:

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Deanna M. Tuley, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Michael J. Norton  
Public Arbitrator

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Signature Date

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Gerald K. Moore  
Non-Public Arbitrator

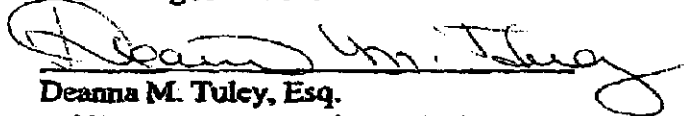
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2/17/05  
Date of Service (NASD use only)

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Public Arbitrator, Presiding Chair

17 Feb 05  
Signature Date

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Michael J. Norton  
Public Arbitrator

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Signature Date

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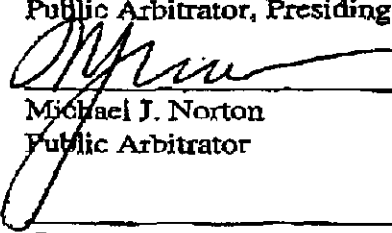
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Michael J. Norton  
Public Arbitrator

2/11/05  
Signature Date

Gerald K. Moore  
Non-Public Arbitrator

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Gerald K. Moore  
Non-Public Arbitrator

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