

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

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In the Matter of the Arbitration Between:

Ernest E. Pugh, Robert T. Jackson, John Paul Hanson, Joseph E. Cerri and Karen A. Cerri  
(Claimants) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc. (Respondent)

Case Number: 04-07249

Hearing Site: Cleveland, Ohio

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Nature of the Dispute: Customers vs. Member

**REPRESENTATION OF PARTIES**

Claimants Ernest E. Pugh ("E. Pugh"), Robert T. Jackson ("R. Jackson"), John Paul Hanson ("J. Hanson"), Joseph E. Cerri ("J. Cerri") and Karen A. Cerri ("K. Cerri") hereinafter collectively referred to as "Claimants": Nicholas P. Iavarone, Esq., Simmons Cooper, LLC, East Alton, IL. Previously represented by Nicholas P. Iavarone, Esq., Bellows and Bellows, PC, East Alton, IL.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. hereinafter referred to as "Respondent": Ari H. Jaffe, Esq., Kohrman Jackson & Krantz PLL, Cleveland, OH.

**CASE INFORMATION**

Statement of Claim filed on or about: October 13, 2004.

Claimants' Response to Respondent's Motion to Sever filed on or about: March 1, 2005.

Claimant E. Pugh signed the Uniform Submission Agreement: October 1, 2004.

Claimant R. Jackson signed the Uniform Submission Agreement: October 5, 2004.

Claimant J. Hanson signed the Uniform Submission Agreement: September 21, 2004.

Claimant J. Cerri signed the Uniform Submission Agreement: September 21, 2004.

Claimant K. Cerri signed the Uniform Submission Agreement: September 21, 2004.

Statement of Answer and Motion to Dismiss filed by Respondent on or about: February 14, 2005.

Motion to Sever filed by Respondent on or about: February 14, 2005.

Respondent's Reply in Support of its Motion to Sever filed on or about: March 15, 2005.

Respondent signed the Uniform Submission Agreement: November 2, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract, violation of the Securities Exchange Act, violation of the Ohio Securities Act and negligence. The causes of action relate to various securities including shares of Intel and Cisco.

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

### **RELIEF REQUESTED**

Claimant E. Pugh requested compensatory damages in the amount of \$83,573.00 and punitive damages in the amount of \$250,719.00. Claimant R. Jackson requested compensatory damages in the amount of \$81,141.00 and punitive damages in the amount of \$243,423.00. Claimant J. Hanson requested compensatory damages in the amount of \$272,196.00 and punitive damages in the amount of \$816,588.00. Claimants J. Cerri and K. Cerri requested compensatory damages in the amount of \$75,372.00 and punitive damages in the amount of \$226,116.00.

Respondent requested that the matter be dismissed in its entirety.

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

On or about February 14, 2005, Respondents filed a Motion to Sever the Claimants' claims. By letter dated November 17, 2005, the Panel granted Respondent's Motion to Sever and ordered that Claimant E. Pugh's case proceed to the hearing on the merits that was previously scheduled.

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 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. Claimant's claims are denied 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	= \$ 500.00
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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 events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce Fenner & Smith, Inc. is party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

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

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

Three (3) Pre-hearing sessions with Panel @ \$1,200.00 = \$3,600.00

Pre-hearing conferences: May 6, 2005 1 session  
October 11, 2005 1 session  
November 17, 2005 1 session

Eight (8) Hearing sessions @ \$1,125.00 = \$9,000.00

Hearing Dates: February 20, 2006 2 sessions  
February 21, 2006 3 sessions  
February 22, 2006 2 sessions  
February 23, 2006 1 session

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Total Forum Fees = \$12,600.00

1. The Panel has assessed \$6,300.00 of the forum fees to Claimant E. Pugh.
2. The Panel has assessed \$6,300.00 of the forum fees to Respondent.

#### Fee Summary

1. Claimant E. Pugh is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 6,300.00
Total Fees	= \$ 6,800.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 5,100.00

2. Respondent is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 6,300.00
Total Fees	= \$14,850.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 6,300.00

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

**ARBITRATION PANEL**

John S. Weisheit	-	Public Arbitrator, Presiding Chairperson
Mitchell B. Goldberg, Esq.	-	Public Arbitrator
Truman M. Hogan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signature(s)**

  
John S. Weisheit  
Public Arbitrator, Presiding Chairperson

3-1-06  
Signature Date

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Mitchell B. Goldberg, Esq.  
Public Arbitrator

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Signature Date

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Truman M. Hogan  
Non-Public Arbitrator

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Signature Date

**March 8, 2006**

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Date of Service (For NASD Dispute Resolution use only)

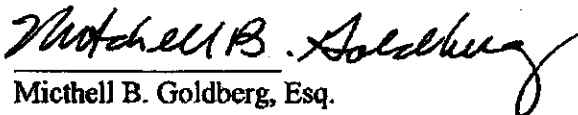
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John S. Weisheit  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Mitchell B. Goldberg, Esq.  
Public Arbitrator

Feb 27, 2006  
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Signature Date

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Truman M. Hogan  
Non-Public Arbitrator

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Signature Date

**March 8, 2006**

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Public Arbitrator, Presiding Chairperson

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Signature Date

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Mitchell B. Goldberg, Esq.  
Public Arbitrator

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

  
Truman M. Hogan  
Non-Public Arbitrator

2/28/06  
Signature Date

**March 8, 2006**

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Date of Service (For NASD Dispute Resolution use only)