

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

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In the Matter of the Arbitration Between:

Names of the Claimants

Resortcol, Inc.  
Alfredo Acosta

Case Number: 04-07420

Names of the Respondents

Merrill Lynch Pierce Fenner & Smith  
Maryann Correa

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Resortcol, Inc. and Alfredo Acosta, hereinafter collectively referred to as "Claimants":  
Randall C. Place, Esq., Blum & Silver, LLP, Coral Springs, Florida.

For Respondents Merrill Lynch Pierce Fenner & Smith ("MLPFS") and Maryann Correa  
("Correa"): S. Lawrence Polk, Esq., Sutherland Asbill & Brennan LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: October 22, 2004.

Claimants signed the Uniform Submission Agreement on: October 5, 2004.

Statement of Answer and Counterclaim filed by Respondents MLPFS and Correa on or about:  
February 15, 2005.

Claimants Answer and Affirmative Defenses to Counterclaim filed on or about: February 28,  
2006.

Respondent MLPFS signed the Uniform Submission Agreement on: November 22, 2004.

Respondent Correa signed the Uniform Submission Agreement on: January 7, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) violation of New York Stock Exchange Rule 405; 2) violation of NASD Rule 2310; 3) breach of contract; 4) breach of fiduciary duty; 5) common law fraud; 6) negligence; and 7) negligent hiring. The causes of action relate to Claimants' purchases of the following stocks: Internet Capital Group; Network Commerce; Tickets.com; Priceline.com; Covad Communications; Compaq Computer; Genzyme-Molecular Oncology; Ivillage Inc.; Microsoft; Rockshox Inc.; Shopnow.com; and Webvan Group Inc., as well as the use of margin in Claimants' accounts.

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

Respondent MLPFS asserted in its Counterclaim that Claimants refused to pay an outstanding margin debit.

Unless specifically admitted in their Answer, Claimants denied the allegations made in Respondent MLPFS's Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount of \$1,000,000.00; 2) interest at the legal rate from date of purchase or reasonable market return; 3) rescission; 4) punitive damages; 5) costs of this proceeding; and, 6) such other relief as is just and proper.

Respondents MLPFS and Correa requested that the undersigned arbitrators (the "Panel"): 1) reject the Statement of Claim in its entirety; and, 2) order that all fees be borne by Claimants.

Respondent MLPFS requested that the Panel render an award in the amount of \$100,000.00, in favor of MLPFS on its Counterclaim.

### **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.

During the evidentiary hearing and at the conclusion of the presentation of Claimants' evidence, Respondents made an ore tenus motion to dismiss. The Panel denied Respondents' motion.

During the evidentiary hearing, Respondents MLPFS and Correa moved to expunge their NASD Central Registration Depository ("CRD") Records. The Panel granted Respondents' request and recommends expungement of all references to the above-captioned arbitration from Respondents MLPFS and Correa's registration records maintained by the CRD.

### **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:

Claimants' claims are denied, with prejudice.

Respondents' counterclaims are denied, with prejudice.

Respondents' requests for expungement are granted. Pursuant to Rule 2130, the Panel has made the following affirmative findings of fact:

1. The claims against Respondent MLPFS are factually impossible or clearly erroneous.
2. Respondent MLPFS was not involved in the alleged investment-related sales practice violations.
3. The claims against Respondent MLPFS are false.
4. The claims against Respondent Correa are factually impossible or clearly erroneous.

5. Respondent Correa was not involved in the alleged investment-related sales practice violations.
6. The claims against Respondent Correa are false.

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

Unless specifically waived in writing by 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.

Any and all claims for relief not specifically addressed herein including Claimants' request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 | = | \$ 375.00  |
| Counterclaim filing fee  | = | \$1,000.00 |

#### **Member Fees**

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, MLPFS is a party and a member firm.

|                            |   |                   |
|----------------------------|---|-------------------|
| Member surcharge           | = | \$2,250.00        |
| Pre-hearing process fee    | = | \$ 750.00         |
| <u>Hearing process fee</u> | = | <u>\$4,000.00</u> |
| Total Member Fees          | = | \$7,000.00        |

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed during these proceedings.

#### **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:

No three-day cancellation fees were 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 arbitration 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) Decisions on discovery-related motions with a single arbitrator<br>@ 200.00 per decision                     | = \$ 600.00    |
| Claimants submitted one discovery-related motion<br>Respondents submitted two discovery-related motions                |                |
| One (1) Pre-hearing session with Panel @ \$1,200.00 per session<br>Pre-hearing conference: February 22, 2005 1 session | = \$ 1,200.00  |
| Ten (10) Hearing sessions @ \$1,200.00 per session   | = \$ 12,000.00 |
| Hearing Dates:   |                |
| April 3, 2006 1 session  |                |
| April 4, 2006 2 sessions   |                |
| April 5, 2006 2 sessions   |                |
| April 6, 2006 2 sessions   |                |
| April 7, 2006 2 sessions   |                |
| April 8, 2006 1 session  |                |
| Total Forum Fees   | = \$13,800.00  |

1. The Panel has assessed \$6,900.00 of the forum fees to Claimants, jointly and severally.
2. The Panel has assessed \$6,900.00 of the forum fees to Respondents, jointly and severally.

### **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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were assessed during these proceedings.

### **Fee Summary**

Claimants are jointly and severally liable for:

|                    |              |
|--------------------|--------------|
| Initial Filing Fee | = \$ 375.00  |
| Forum Fees         | = \$6,900.00 |
| Total Fees         | = \$7,275.00 |

|                                     |              |
|-------------------------------------|--------------|
| <u>Less payments</u>                | = \$1,575.00 |
| Balance Due NASD Dispute Resolution | = \$5,700.00 |

Respondent MLPFS is solely liable for:

|                                     |              |
|-------------------------------------|--------------|
| Member Fees                         | = \$7,000.00 |
| <u>Counterclaim Filing Fee</u>      | = \$1,000.00 |
| Total Fees                          | = \$8,000.00 |
| <u>Less payments</u>                | = \$8,000.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00    |

Respondents are jointly and severally liable for:

|                                     |              |
|-------------------------------------|--------------|
| Forum Fees                          | = \$6,900.00 |
| <u>Total Fees</u>                   | = \$6,900.00 |
| <u>Less payments</u>                | = \$ 750.00  |
| Balance Due NASD Dispute Resolution | = \$6,150.00 |

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

#### **ARBITRATION PANEL**

|                         |   |  |
|-------------------------|---|--|
| Barry K. Thorpe, Esq.   | - | Public Arbitrator, Presiding Chairperson |
| Alan B. Goldstein, Esq. | - | Public Arbitrator                        |
| Robert M. Reback        | - | Non-Public Arbitrator                    |

#### **Concurring Arbitrators' Signatures**

/s/ \_\_\_\_\_  
Barry K. Thorpe, Esq.  
Public Arbitrator, Presiding Chairperson

April 12, 2006  
Signature Date

#### **Concurring in Part, Dissenting in Part Arbitrators' Signatures**

Arbitrator Goldstein concurs with the Panel's decision in all parts except that Arbitrator Goldstein dissents with the findings of no liability under the claims of negligent supervision, breach of fiduciary duty and negligence, as alleged in the Statement of Claim. Additionally, Arbitrator Goldstein dissents as to the recommendation of expungement of all references to the above captioned arbitration from Respondents MLPFS and Correa's registration records maintained by the CRD.

/s/ \_\_\_\_\_  
Alan B. Goldstein, Esq.  
Public Arbitrator

April 12, 2006  
Signature Date

Arbitrator Reback concurs with the Panel's decision in all parts except that Arbitrator Reback dissents with the denial of the counterclaim.

/s/

Robert M. Reback  
Non-Public Arbitrator

April 12, 2006  
Signature Date

April 12, 2006

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

|                                     |              |
|-------------------------------------|--------------|
| <u>Less payments</u>                | = \$1,575.00 |
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Respondent MLPFS is solely liable for:

|                                     |              |
|-------------------------------------|--------------|
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\_\_\_\_\_  
Barry K. Thorpe, Esq.  
Public Arbitrator, Presiding Chairperson

4/12/06  
\_\_\_\_\_  
Signature Date

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Arbitrator Goldstein concurs with the Panel's decision in all parts except that Arbitrator Goldstein dissents with the findings of no liability under the claims of breach of contract, breach of fiduciary duty and negligence, as alleged in the Statement of Claim.

\_\_\_\_\_  
Alan B. Goldstein, Esq.  
Public Arbitrator

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

|                                     |              |
|-------------------------------------|--------------|
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| Balance Due NASD Dispute Resolution | = \$5,700.00 |

Respondent MLPFS is solely liable for:

|                                     |              |
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| Member Fees                         | = \$7,000.00 |
| <u>Counterclaim Filing Fee</u>      | = \$1,000.00 |
| Total Fees                          | = \$8,000.00 |
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| Balance Due NASD Dispute Resolution | = \$ 0.00    |

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| Alan B. Goldstein, Esq. | - | Public Arbitrator                        |
| Robert M. Reback        | - | Non-Public Arbitrator                    |

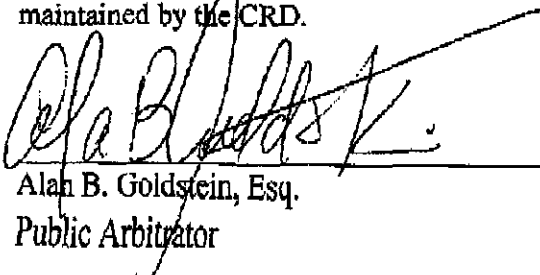
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\_\_\_\_\_  
Alan B. Goldstein, Esq.  
Public Arbitrator

4/12/06  
Signature Date



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Arbitration No. 04-07420

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Arbitrator Reback concurs with the Panel's decision in all parts except that Arbitrator Reback dissents with the denial of the counterclaim.

Robert M. Rabak

**Robert M. Reback**  
Non-Public Arbitrator

4/12/2006  
Signature Date

**Date of Service (For NASD Dispute Resolution Office use only)**

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