

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Eleonore Van den Berghe, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and
David A. Kahn, Respondents

Case Number: 04-08299

Hearing Site: Phoenix, Arizona

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

REPRESENTATION OF PARTIES

For Claimant:

Chad P. Hemmat, Esq.
Anderson, Hemmat and Levine
L.L.C.
Denver, Colorado

For Respondents:

Eric J. Glassman, Esq.
Mennemeier, Glassman & Stroud
LLP
Sacramento, California

CASE INFORMATION

Statement of Claim filed: December 3, 2004

Claimant's Uniform Submission Agreement signed: November 29, 2004

Joint Statement of Answer filed by Respondents: March 4, 2005

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission
Agreement signed: January 25, 2005

Respondent David A. Kahn's Uniform Submission Agreement signed: March 14, 2005

CASE SUMMARY

Claimant alleged breach of contract, breach of fiduciary duty, violation of Blue Sky Laws, negligence, negligent supervision, negligent misrepresentation and fraud. Claimant's allegations involved investments in AOL, MCI, Cisco, Intel, Iomega, and Microsoft.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested \$300,000.00 in compensatory damages, unspecified punitive damages, offset for tax liability, pre- and post-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of all reference to the above captioned arbitration from Respondent David A. Kahn's registration records maintained by the NASD Central Registration Depository ("CRD"), and costs, including attorney's fees.

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

- 1) Respondents are jointly and severally liable to and shall pay Claimant the sum of \$20,000.00 in compensatory damages.
- 2) Respondents are liable to and shall pay Claimant interest on the sum of \$20,000.00 at a rate of six and one half percent per annum from January 25, 2005, until this award is paid in full.
- 3) Claimant's claim for punitive damages is denied.
- 4) Respondent David A. Kahn's request for expungement is denied.
- 5) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
--------------------------	-------------

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party and the following fees are assessed:

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

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: May 4, 2005 1 session	
(6) Hearing sessions @ 1,125.00/session	= \$ 6,750.00
Hearings: January 18, 2006 2 sessions	
January 19, 2006 2 sessions	
January 20, 2006 2 sessions	
Total Forum Fees	= \$ 7,875.00

1. The Panel assessed \$3,937.50 of the forum fees to Claimant.
2. The Panel assessed \$3,937.50 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 3,937.50
Total Fees	= \$ 4,237.50
<u>Less payments</u>	= \$(1,575.00)
Balance Due NASD Dispute Resolution	= \$ 2,662.50

2. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	= \$(5,200.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	= \$ 3,937.50
Balance Due NASD Dispute Resolution	= \$ 3,937.50

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

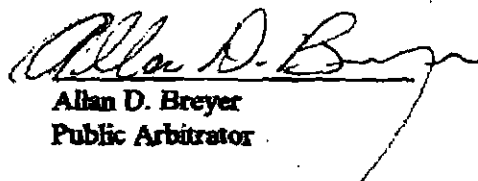
ARBITRATION PANEL

Warren C. Kotzmann	-	Public Arbitrator, Presiding Chair
Allan D. Breyer	-	Public Arbitrator
Ralph H. Martin, III	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Warren C. Kotzmann
Chair, Public Arbitrator

Signature Date



Allan D. Breyer
Public Arbitrator

01-25-06

Signature Date

Ralph H. Martin, III
Non-Public Arbitrator

Signature Date

1/26/06

Date of Service

ARBITRATION PANEL

Warren C. Kotzmann
Allan D. Breyer
Ralph H. Martin, III

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures

Warren C. Kotzmann
Chair, Public Arbitrator

Signature Date

Allan D. Breyer
Public Arbitrator

Signature Date


Ralph H. Martin, III
Non-Public Arbitrator

1/25/06
Signature Date

1/26/06
Date of Service

ARBITRATION PANEL

Warren C. Kotzmann
Allan D. Breyer
Ralph H. Martin, III

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures


Warren C. Kotzmann
Chair, Public Arbitrator

1/25/2006
Signature Date

Allan D. Breyer
Public Arbitrator

Signature Date

Ralph H. Martin, III
Non-Public Arbitrator

Signature Date

Date of Service