
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

James G. Xilas
XLS Argus Venture Group, LLC

Case Number: 04-08692

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith Incorporated
William Wong
Oppenheimer & Co., Inc.
Dennis P. McNamara
Allen R. Holeman
Emil J. Jutrowski
James F. Lowe
Michele A. Grassi

Hearing Site: Boca Raton, Florida

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

REPRESENTATION OF PARTIES

Claimant James G. Xilas ("Xilas") appeared *pro se*.

For Claimant XLS Argus Venture Group, LLC ("XLS"): James G. Xilas, Fort Lauderdale, Florida.

For Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS") and William Wong ("Wong"): Coren H. Stern, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

For Respondents Oppenheimer & Co., Inc. ("Oppenheimer"), Dennis P. McNamara ("McNamara"), Allen R. Holeman ("Holeman"), Emil J. Jutrowski ("Jutrowski"), James F. Lowe ("Lowe") and Michele A. Grassi ("Grassi"): Edward J. Boyle, Esq., Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: December 19, 2004.

Claimant Xilas signed Uniform Submission Agreements on: December 19, 2004 and March 14, 2005.

Claimant XLS signed Uniform Submission Agreements on: December 19, 2004 and March 14, 2005.

Statement of Answer filed by Respondent MLPFS on or about: April 25, 2005.

Statement of Answer filed by Respondent Wong on or about: February 18, 2005.

Claimants' Reply to Respondent Wong's Statement of Answer filed on or about: February 22, 2005.

Clarification of Statement of Claim filed by Claimants on or about: February 24, 2005.

Statement of Answer filed by Respondents Oppenheimer, McNamara, Holeman, Jutrowski, Lowe and Grassi on or about: April 1, 2005.

Counterclaim filed by Respondent Oppenheimer on or about: April 1, 2005.

Motion to Dismiss Claimants' Statement of Claim filed by Respondents MLPFS and Wong on or about: January 31, 2006.

Motion to Dismiss filed by Respondents Oppenheimer, McNamara, Holeman, Jutrowski, Lowe and Grassi on or about: January 25, 2006.

Respondent MLPFS signed the Uniform Submission Agreement on: March 6, 2006.

Respondent Wong signed the Uniform Submission Agreement on: March 8, 2006.

Respondent Oppenheimer signed the Uniform Submission Agreement on: March 10, 2005.

Respondents McNamara, Holeman, Jutrowski, Lowe and Grassi did not file executed Uniform Submission Agreements.

CASE SUMMARY

Claimants alleged the following causes of action in the Statement of Claim: 1) negligence; 2) omission of facts; 3) breach of fiduciary duty; 4) misrepresentation/non-disclosures; and 5) indemnification. The causes of action relate to investments in shares of common stock in Jackley Holdings Ltd.

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

Respondent Oppenheimer alleged an unspecified cause of action in its Counterclaim for reimbursement of its legal fees.

RELIEF REQUESTED

Claimants requested: 1) compensatory damages in the amount of \$63,374.00 for the value of Claimants' investment prior to the accounts being frozen; 2) punitive damages in the amount of \$25,000.00; 3) interest in the amount at least of \$9,870.12; 4) return of cash position in the amount of \$44,300.00; 5) costs, including filing fees, charges and payments; and 6) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents MLPFS and Wong requested: 1) dismissal, with prejudice, of the Statement of Claim; 2) costs and fees; and 3) such other relief the Panel deemed just and proper.

Respondents Oppenheimer, McNamara, Holeman, Jutrowski, Lowe and Grassi requested: 1) dismissal, with prejudice, of the Statement of Claim; 2) reasonable legal and administrative costs; and 3) such other relief the Panel deemed just and proper. Further, Respondent Oppenheimer requested reimbursement of its legal fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents McNamara, Holeman, Jutrowski, Lowe and Grassi did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On or about February 18, 2005, Merrill Lynch & Co., Merrill Lynch Far East Limited and Christopher Ching, non-members of NASD, filed their notice to decline and not submit to the jurisdiction of NASD. Therefore, the Panel made no determination with respect to Merrill Lynch & Co., Merrill Lynch Far East Limited and Christopher Ching.

On or about February 28, 2005, Respondent Wong filed his Motion to Strike Claimants' Reply to Respondent's Answer. On or about March 1, 2005, Claimants filed their response in opposition to the motion. At the telephonic pre-hearing conference held on May 24, 2005, Respondent Wong withdrew his motion.

On or about February 8, 2006, the Panel: 1) denied Respondents MLPFS and Wong's Motion to Dismiss; and 2) denied Respondents Oppenheimer, McNamara, Holeman, Jutrowski, Lowe and Grassi's Motion to Dismiss.

On or about February 21, 2006, Respondents MLPFS and Wong filed their Motion to Preclude. On or about February 22, 2006, Claimants filed their response and witness and exhibit lists. Thereafter, the Panel determined the motion to be moot.

At the evidentiary hearing, all Respondents made *ore tenus* motions for directed verdict. Thereafter, the Panel denied the motions for directed verdict.

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety. The Panel finds that Claimants' claims are false and without merit.

2. Claimants' request for punitive damages is denied.
3. Each party shall bear its respective attorneys' fees and costs, except as provided in Paragraphs 4 and 5 of this Award.
4. Claimant Xilas is liable and shall reimburse Respondent Wong for the cost of his airline ticket to appear at the evidentiary hearing.
5. Claimant Xilas is liable and shall reimburse Respondent McNamara for the cost of his airline ticket to appear at the evidentiary hearing.
6. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Wong, McNamara, Holeman, Jutrowski, Lowe and Grassi's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondents Wong, McNamara, Holeman, Jutrowski, Lowe and Grassi must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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.

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

The claim, allegation, or information is false.

7. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

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, Respondents MLPFS and Oppenheimer are member firms and parties.

Member surcharge = \$1,700.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 per session = \$ 450.00

Pre-hearing conference: January 17, 2006 1 session

Three (3) Pre-hearing sessions with Panel @ \$1,125.00 per session = \$3,375.00

Pre-hearing conferences: May 24, 2005 1 session

February 8, 2006 1 session

February 24, 2006 1 session

Three (3) Hearing sessions @ \$1,125.00 per session = \$3,375.00

Hearing Dates: March 6, 2006 2 sessions

March 7, 2006 1 session

Total Forum Fees = \$7,200.00

The Panel has assessed the total forum fees in the amount of \$7,200.00 jointly and severally to Claimants.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$7,200.00</u>
Total Fees	= \$7,500.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution	= \$6,075.00

Respondent MLPFS is solely liable for:

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

Respondent Oppenheimer is solely liable for:

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

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

ARBITRATION PANEL

<i>Michael Lukasievich, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Barth Satuloff, CPA</i>	-	<i>Public Arbitrator</i>
<i>Kathy N. Novick</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

_____/s/
Michael Lukasievich, Esq.
Public Arbitrator, Presiding Chairperson

March 10, 2006
Signature Date

_____/s/
Barth Satuloff, CPA
Public Arbitrator

March 10, 2006
Signature Date

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/s/
Kathy N. Novick
Non-Public Arbitrator

March 10, 2006
Signature Date

March 13, 2006
Date of Service (For NASD Dispute Resolution office use only)

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There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$7,200.00
Total Fees	= \$7,500.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$6,075.00

Respondent MLPFS is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Oppenheimer is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

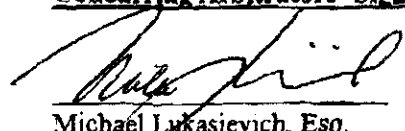
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Michael Lukasievich, Esq.
 Barth Satuloff, CPA
 Kathy N. Novick

- Public Arbitrator, Presiding Chairperson
 - Public Arbitrator
 - Non-Public Arbitrator

Concurring Arbitrators' Signatures


 Michael Lukasievich, Esq.
 Public Arbitrator, Presiding Chairperson

3-10-06
 Signature Date

Barth Satuloff, CPA
 Public Arbitrator

Signature Date

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$7,200.00
Total Fees	= \$7,500.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$6,075.00

Respondent MLPFS is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Oppenheimer is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Michael Lukasievich, Esq.	-	Public Arbitrator, Presiding Chairperson
Barth Satuloff, CPA	-	Public Arbitrator
Kathy N. Novick	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Michael Lukasievich, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Barth Satuloff, CPA
Public Arbitrator

3/10/06
Signature Date

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Dating to Novich

3/10/06
Signature Date

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