

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

---

In the Matter of the Arbitration Between:

Names of the Claimants

LeRoy Hoyer and Anna Hoyer individually  
& as Trustees for Danielle Hoyer, Justin Hoyer,  
and Jayson Hoyer.

Case Number: 05-00680

Names of the Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Gregory Benedict Popera  
John Vincent Greco  
Kent Weston Overholt  
Pam Murphy

Hearing Site: Washington, DC

---

Nature of the Dispute: Customers vs. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimants, LeRoy Hoyer and Anna Hoyer individually and as Trustees for Danielle Hoyer, Justin Hoyer, and Jayson Hoyer, hereinafter collectively referred to as "Claimants", were represented by Saul Roffe, Esq., Sirota & Sirota, LLP, New York, New York.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), Gregory Benedict Popera ("Popera"), John Vincent Greco ("Greco"), Kent Weston Overholt ("Overholt"), and Pam Murphy ("Murphy"), hereinafter collectively referred to as "Respondents", were represented by G. Jeffrey Boujoukos, Morgan, Lewis & Bockius, LLP, Philadelphia, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on February 6, 2005.

Claimants LeRoy Hoyer and Anna Hoyer signed the Uniform Submission Agreement on January 31, 2005.

Claimants LeRoy and Anna Hoyer signed the Uniform Submission Agreement as Trustees for Danielle Hoyer, Justin Hoyer, and Jayson Hoyer on February 23, 2005.

Motion to Amend Statement of Claim filed by Claimants on September 27, 2005.

Claimants filed a Reply in Further Support of Motion to Amend Statement of Claim on October 25, 2005.

Statement of Answer filed by Respondents on June 3, 2005.

Respondent Popera signed the Uniform Submission Agreement on June 22, 2005.

Respondent Greco signed the Uniform Submission Agreement on June 23, 2005.

Respondent Overholt signed the Uniform Submission Agreement on June 22, 2005.

Respondent Murphy signed the Uniform Submission Agreement on June 22, 2005.

A representative of Respondent Merrill Lynch executed the Uniform Submission Agreement on June 28, 2005.

Respondents filed a Response in Opposition to Claimants' Motion to Amend Statement of Claim on October 21, 2005.

### **CASE SUMMARY**

Claimants asserted the following causes of action, among others: churning; unsuitability; and risky and inappropriate trading. The causes of action relate to trading in Claimants' accounts.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimants approved, authorized, participated in and ratified the transactions complained of; Claimants fail to state a claim upon which relief may be granted; the claims are barred in whole or in part by statutes of limitations, operation of Rule 10304 of the NASD Code of Arbitration Procedure (the "Code"), and the doctrine of laches; contributory negligence; and failure to mitigate damages, if any.

### **RELIEF REQUESTED**

Claimants in their Statement of Claim requested:

Compensatory Damages	\$4,000,000.00
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the Statement of Claim be dismissed in its entirety; that Respondents be awarded reasonable costs and attorneys' fees; and that all reference to this arbitration be expunged from the records of Respondents Popera, Greco, Overholt, and Murphy maintained by the NASD Central Registration Depository ("CRD").

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

By Order dated November 15, 2005, the Arbitration Panel (the "Panel") denied Claimants' Motion to Amend Statement of Claim.

At the conclusion of Claimants' case-in-chief, Respondents moved the Panel to dismiss all claims asserted against them.

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. All claims against Respondents are dismissed with prejudice;

2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Popero's, Greco's, Overholt's and Murphy's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondents Popero, Greco, Overholt and Murphy 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 the NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130 the Panel has made the following affirmative finding of fact: the claim allegation or information is clearly erroneous;

3. All claims for punitive damages and attorneys' fees are denied in their entirety;
4. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
5. Any and all relief not specifically addressed herein is denied in its entirety.

### 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	= \$ 600.00
--------------------------	-------------

#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Merrill Lynch is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00
<b>Total Member Fees</b>	<b>= \$8,550.00</b>

#### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

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

Pre-hearing conference: January 11, 2006 1 session  
One (1) Pre-hearing session with Panel @ \$1,200.00 = \$1,200.00  
Pre-hearing conference: September 8, 2005 1 session  
Six (6) Hearing sessions @ \$1,200.00 = \$7,200.00  
Hearing Dates: February 13, 2006 2 sessions  
February 14, 2006 2 sessions  
February 15, 2006 2 sessions  

---

Total Forum Fees = \$8,850.00

1. The Panel has assessed \$4,425.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$4,425.00 of the forum fees to Respondent Merrill Lynch.

#### **EEE SUMMARY**

1. Claimants are jointly and severally assessed and shall pay the following fees:  
Initial Filing Fee = \$ 600.00  
Forum Fees = \$ 4,425.00  
Total Fees = \$ 5,025.00  
Less payments = \$ 1,800.00  
Balance Due NASD Dispute Resolution = \$ 3,225.00
2. Respondent Merrill Lynch is assessed and shall pay the following fees:  
Member Fees = \$ 8,550.00  
Forum Fees = \$ 4,425.00  
Total Fees = \$12,975.00  
Less payments = \$ 8,550.00  
Balance Due NASD Dispute Resolution = \$ 4,425.00

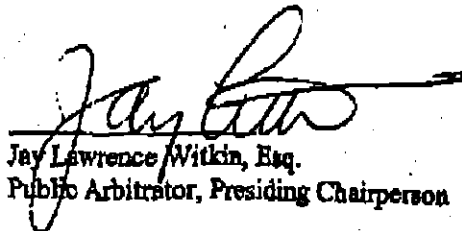
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

#### **ARBITRATION PANEL**

Jay Lawrence Witkin, Esq.	-	Public Arbitrator, Presiding Chairperson
Gloria Asher	-	Public Arbitrator, Panelist
Stephanie Malevich	-	Non-Public Arbitrator, Panelist

NASD Dispute Resolution  
Arbitration No. 05-00680  
Award Page 5

Concurring Arbitrators' Signatures

  
Jay Lawrence Witkin, Esq.  
Public Arbitrator, Presiding Chairperson

February 22, 2006  
Signature Date

Gloria Asher  
Public Arbitrator, Panelist

Signature Date

Stephanic Malevich  
Non-Public Arbitrator, Panelist

Signature Date

2/24/06  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 05-00680

~~Arbitration No. 05-00680~~  
Award Eastern Parkway, Apt. 505Concurring Arbitrators' Signatures

\_\_\_\_\_  
Jay Lawrence Witkin, Esq.  
Public Arbitrator, Presiding Chairperson

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

Gloria Asher  
Gloria Asher  
Public Arbitrator, Panelist

Feb. 23, 2006  
Signature Date

\_\_\_\_\_  
Stephanie Malevich  
Non-Public Arbitrator, Panelist

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

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

Feb 22 06 11:38a

Stephanie Malevich

703-534-0125

007/007 P. 1

02/21/2006 17:25 FAX 202 728 8082

NASD DISPUTE RESOLUTION

NASD Dispute Resolution  
Arbitration No. 05-00680  
Award Page 5

Concurring Arbitrators' Signatures

Jay Lawrence Witkin, Esq.  
Public Arbitrator, Presiding Chairperson

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

Gloria Asher  
Public Arbitrator, Panelist

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



Stephanie Malevich  
Non-Public Arbitrator, Panelist

2/22/06  
Signature Date

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