

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

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In the Matter of the Arbitration Between:

Mukesh Kumar Agarwal (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.  
(Respondent)

Case Number: 05-01355

Hearing Site: Newark, NJ

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Claimant Mukesh Kumar Agarwal hereinafter referred to as "Claimant" appeared *pro se*.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. hereinafter referred to as "Respondent":  
Alan Rafterman, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: March 15, 2005.

Claimant signed the Uniform Submission Agreement: March 21, 2005.

Statement of Answer filed by Respondent on or about: August 17, 2005.

Respondent did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: loss of market opportunity due to a technical problem regarding the sale of securities and the failure to rectify the problem. The causes of action relate to various options and Apple stock.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages of \$148,000.00.

Respondent requested dismissal of the Statement of Claim in its entirety, with prejudice; award of costs and expenses associated with this arbitration; forum fees; reasonable attorney's fees; and such other and further relief as is just and proper.

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

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing is bound by the determination of the Panel on all issues submitted.

At the hearing, Respondent moved to dismiss the claim. The Panel reserved decision on the motion and later granted Respondent's motion.

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 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	= \$ 300.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

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

#### **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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: November 15, 2005 1 session	

Two (2) Pre-hearing sessions with Panel @ \$1,125.00/session	= \$2,250.00
Pre-hearing conferences: July 29, 2005	1 session
August 1, 2005	1 session

Two (2) Hearing sessions @ \$1,125.00/session	= \$2,250.00
Hearing Date: December 1, 2005	2 sessions

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Total Forum Fees	= \$4,950.00
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1. The Panel has assessed \$1,125.00 of the forum fees to Claimant.
2. The Panel has assessed \$3,825.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,425.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent is solely liable for:

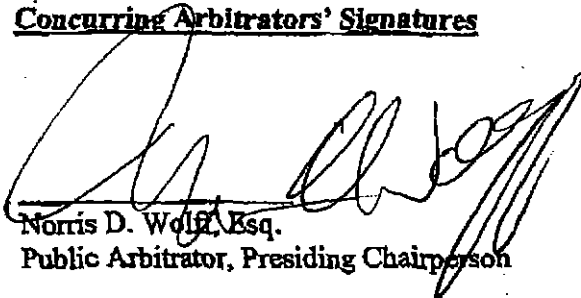
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,825.00
Total Fees	= \$ 9,025.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 3,825.00

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

**ARBITRATION PANEL**

Norris D. Wolff, Esq.	-	Public Arbitrator, Presiding Chairperson
Madelon M. Rosenfeld, Esq.	-	Public Arbitrator
Gerald Joseph Coughlin	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Norris D. Wolff, Esq.  
Public Arbitrator, Presiding Chairperson

12/8/05  
Signature Date

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Madelon M. Rosenfeld, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Gerald Joseph Coughlin  
Non-Public Arbitrator

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

December 8, 2005  
Date of Service (For NASD Dispute Resolution use only)

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Madelon M. Rosenfeld, Esq.	-	Public Arbitrator
Gerald Joseph Coughlin	-	Non-Public Arbitrator

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Public Arbitrator

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Signature Date

  
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Gerald Joseph Coughlin  
Non-Public Arbitrator

12-8-2005  
Signature Date

December 9, 2005  
Date of Service (For NASD Dispute Resolution use only)