

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Howard J. Kuntz, III (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith Incorporated (Respondent)

Case Number: 05-04162

Hearing Site: New York, New York

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

Claimant Howard J. Kuntz, III hereinafter referred to as "Claimant": Alan L. Frank, Esq., Frank, Rosen, Snyder & Moss, LLP, Elkins Park, PA.

Respondent Merrill Lynch, Pierce, Fenner and Smith Incorporated hereinafter referred to as "Respondent": Dimitri Nemirovsky, Esq., Bingham McCutchen LLP, New York, NY.
Previously represented by Thomas J. Mullaney, Esq., Merrill Lynch, Pierce, Fenner & Smith Incorporated, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 8, 2005.

Claimant signed the Uniform Submission Agreement: August 4, 2005.

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

Motion to Dismiss filed by Respondent on or about: November 18, 2005.

Respondent signed the Uniform Submission Agreement: October 26, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, violations of NASD and NYSE suitability rules, violations of the Connecticut Uniform Securities Act, breach of fiduciary duty, failure to supervise, control person liability, breach of contract, breach of the covenant of good faith and fair dealing, respondeat superior, and professional negligence. The causes of action relate to unregistered CyberShop stock.

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

RELIEF REQUESTED

Claimants requested compensatory damages in an amount in excess of \$5,000,000.00 plus

interest, costs, reasonable attorneys' fees, punitive damages, and such other and further relief as the Arbitrators deem just and proper.

Respondent requested dismissal of the Statement of Claim in its entirety, and such other, further, and different relief as the Panel may deem appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

A telephonic pre-hearing conference was held on February 21, 2006, during which the Panel heard oral arguments on Respondent's Motion to Dismiss. After due deliberation, the Panel granted Respondent's Motion to Dismiss.

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 and Respondent's Motion to Dismiss, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Under Connecticut law, the statute of limitations for oral contracts involving goods or services is three years. The Panel found that there is no evidence of specific terms and/or specified duties in the parties' written contract that Respondent was obligated to perform for Claimant and that Respondent is alleged to have breached. Therefore, the Panel found that the three-year Connecticut statute of limitations is applicable to this arbitration proceeding and as such, Claimant's claims are untimely and barred by the statute of limitations. Accordingly, Claimant's claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$ 600.00
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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 person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith Incorporated is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

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

Two (2) Pre-hearing sessions with Panel @ \$1,200.00/session	= \$	2,400.00
Pre-hearing conferences: December 12, 2005 1 session		
February 21, 2006 1 session		
Total Forum Fees	= \$	2,400.00

1. The Panel has assessed \$1,200.00 of the forum fees to Claimant.
2. The Panel has assessed \$1,200.00 of the forum fees to Respondent.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$	600.00
<u>Forum Fees</u>	<u>= \$</u>	<u>1,200.00</u>
Total Fees	= \$	1,800.00
<u>Less payments</u>	<u>= \$</u>	<u>1,800.00</u>
Balance Due NASD Dispute Resolution	= \$	0.00

2. Respondent is solely liable for:

Member Fees	= \$	8,550.00
<u>Forum Fees</u>	<u>= \$</u>	<u>1,200.00</u>
Total Fees	= \$	9,750.00
<u>Less payments</u>	<u>= \$</u>	<u>8,550.00</u>
Balance Due NASD Dispute Resolution	= \$	1,200.00

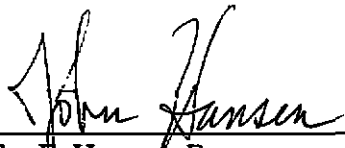
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

John E. Hansen, Esq.	-	Public Arbitrator, Presiding Chairperson
David B. Beizer, Esq.	-	Public Arbitrator
William John Clark	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



John E. Hansen, Esq.
Public Arbitrator, Presiding Chairperson



Signature Date

David B. Beizer, Esq.
Public Arbitrator

Signature Date

William John Clark
Non-Public Arbitrator

Signature Date

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

ARBITRATION PANEL

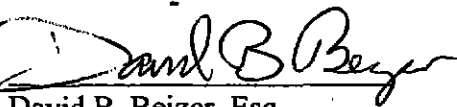
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John E. Hansen, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



David B. Beizer, Esq.
Public Arbitrator

3/13/06
Signature Date

William John Clark
Non-Public Arbitrator

Signature Date

March 13, 2006

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

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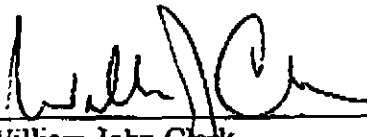
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John E. Hansen, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

David B. Beizer, Esq.
Public Arbitrator

Signature Date



William John Clark
Non-Public Arbitrator

3-2-06
Signature Date

March 13, 2006
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