

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimant(s)**

Rohm Corporation

NASD Arbitration  
No. 92-02356

**Name of Respondent(s)**

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Timothy J. Bangert

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**REPRESENTATION**

For Claimant: Paul A. Renne, Esq. and Steven L. Friedlander, Esq., Cooley  
Godward Castro Huddleson & Tatum, San Francisco, California

For Respondents: John W. Keker, Esq. and Laird J. Lucas, Esq., Keker, Brockett  
& Van Nest, San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: July 14, 1992

Claimant's Submission Agreement signed: July 9, 1992

Joint Statement of Answer filed by Respondents: September 28, 1992

Respondents' Submission Agreements signed as follows:

Merrill Lynch, Pierce, Fenner & Smith, Inc.: July 30, 1992

Timothy J. Bangert: September 14, 1992

## **HEARING INFORMATION**

Pre-Hearing Conference Date/Session: February 4, 1993 (one session)

Hearing Dates/Sessions:      March 30, 1993 (two sessions)  
   March 31, 1993 (two sessions)  
   April 1, 1993 (two sessions)  
   April 2, 1993 (three sessions)  
   April 7, 1993 (two sessions)  
   April 8, 1993 (two sessions)  
   May 17, 1993 (two sessions)  
   May 18, 1993 (two sessions)  
   May 19, 1993 (two sessions)  
   May 20, 1993 (two sessions)  
   July 1, 1993 (one session)

Hearing Location:              San Francisco, California

## **CASE SUMMARY**

Claimant, Rohm Corporation (Rohm) alleged that Respondent Timothy J. Bangert, a Financial Consultant with Merrill Lynch, Pierce, Fenner & Smith, Inc. (Merrill Lynch), was specifically instructed and agreed to use his expertise to invest Rohm's cash in shortterm investments rated AA or better. Rohm further alleged that on or about October 2, 1991, Respondents invested \$6 million (3/4 of Rohm's total available cash) in sixty high-risk, tax-advantaged shares of Ratners, a troubled British jewelry retailer, and that this investment was in violation of Rohm's investment requirements, in disregard of the fact that Rohm had no interest in tax-advantaged investments - and without providing any information about the investment or obtaining from Rohm the necessary signed Purchaser's Letter acknowledging the risks of the investment. Claimant further alleged that because Respondents did not disclose to Rohm the facts about the investment, and because the investment was not suitable to Rohm's stated need for safety and liquidity, Respondents are liable to Rohm under the antifraud provisions of the federal and California securities laws and for fraud, negligent misrepresentation, and breach of fiduciary duty under California common law. Claimant also alleged that by selling unregistered securities without a valid exemption from registration, Respondents violated federal and California registration laws.

Respondents denied Claimant's allegations and alleged that Rohm is a large and sophisticated investor, which was provided with all material information in advance of each trade, including ratings and yields, and which selected and authorized the purchase of all securities in its Merrill Lynch account. Respondents also asserted affirmative defenses to Claimant's allegations.

### **RELIEF REQUESTED**

Claimant requested:

1. Restitution of its \$6 million, plus interest on that amount at the legal rate from October 2, 1991 to the date of award (with a credit of \$128,103.33 for net dividends paid by Ratners before it suspended payment of dividends);
2. Punitive damages;
3. Attorney's fees; and
4. Costs.

Respondents requested dismissal of Claimant's claims.

### **OTHER ISSUES CONSIDERED & DECIDED**

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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the National Association of Securities Dealers, Inc. (NASD).

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Merrill Lynch is solely liable for and shall pay to Claimant the sum of \$293,595.00 plus interest at the legal rate from October 2, 1991 until payment of Award.
2. Claimant is liable for and shall transfer three shares (\$300,000.00 face value) of Ratners' variable rate preferred stock to Merrill Lynch.

4. Claimant's claim for punitive damages is denied.
5. The parties shall each bear their respective costs including attorney's fees.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$1,500.00 hearing session deposit previously deposited by the Claimant. Forum fees are assessed against:

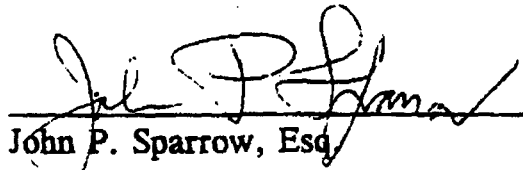
Respondent Merrill Lynch, solely, in the amount of \$16,800.00, calculated as follows: One pre-hearing session times \$300.00/session plus twenty-two hearing sessions times \$750.00/session.

Fees are payable to the National Association of Securities Dealers, Inc.

### **ARBITRATORS**

<u>Name</u>	<u>Public/Industry</u>
John P. Sparrow, Esq.	Public Arbitrator
Martin Karp	Public Arbitrator
David H. Brazil	Industry Arbitrator

### **Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
John P. Sparrow, Esq.

\_\_\_\_\_  
Martin Karp

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David H. Brazil

Date of Decision: \_\_\_\_\_

4. Claimant's claim for punitive damages is denied.
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