

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

Name of Claimant

William R. & Lynda E. O'Neill

NASD Arbitration  
No. 95-00999

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Lealyn Paul Clark, III

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**REPRESENTATION**

For Claimant: Keith A. Ketterling, Esq., Stoll Stoll Berne Lokting & Shlachter, Portland,  
Oregon, and Richard S. Yugler, Esq., Portland, Oregon

For Respondents: Thomas C. Sand, Esq., Miller, Nash, Wiener, Hager & Carlsen, Portland,  
Oregon

**CASE INFORMATION**

Statement of Claim filed: February 21, 1995

Claimant's Submission Agreement signed: February 16, 1995

Joint Statement of Answer filed: April 21, 1995

Respondent's Submission Agreement signed:

Merrill Lynch: April 21, 1995

Lealyn Paul Clark, III: May 5, 1995

**HEARING INFORMATION**

The evidentiary hearing was held in Portland, Oregon, as follows:

February 28, 1996 - 2 sessions

February 29, 1996 - 3 sessions

## **CASE SUMMARY**

Claimants alleged negligence, breach of fiduciary duty, failure to supervise, and violations of the Securities Exchange Act of 1934 and Oregon Securities Laws with respect to investments in the common stock of Borland and Novell.

Respondents denied the allegations of wrongdoing, and asserted that the claim was merely an attempt by Claimants to shift to Respondents the responsibility for their own unsolicited orders for the purchase of stocks based on Claimants' own independent research.

## **RELIEF REQUESTED**

Claimants requested damages of at least \$897,000, plus pre-judgement interest and attorney's fees.

Respondents requested dismissal of all claims.

## **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be executed in either 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 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 shall pay to Claimants the sum of \$25,000 in satisfaction of all claims.
2. The parties shall each bear their respective costs of arbitration, including attorney's fees.

## **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain Claimants' \$250 non-refundable filing fee, but shall refund their \$1000 hearing session deposit.

Respondent Merrill Lynch is assessed all forum fees, payable to the NASD, Inc.

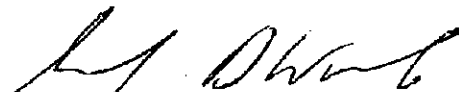
Respondent Merrill Lynch is assessed all forum fees, payable to the NASD, Inc.

5 hearing sessions @ \$1000/session = \$5000

**ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
Gerald D. Wygant, Esq.	Public
Nelson Olf	Public
Guy E. Jaques	Industry

**Concurring Arbitrators' Signatures**

  
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Gerald D. Wygant, Esq.

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Nelson Olf

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Guy E. Jaques

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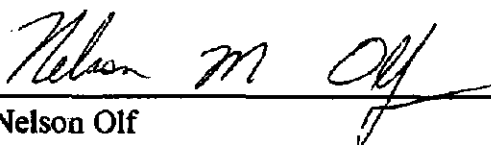
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