Award

NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Barbara Nguyen

Case Number: 04-06732

Name of the Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Barbara Nguyen, hereinafter referred to as "Claimant": Randall Place, Esq., Blum & Silver, L.L.P., Coral Springs, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Brian Hale, Esq., Sutherland Asbill & Brennan, L.L.P., Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: September 23, 2004.
Claimant signed the Uniform Submission Agreement: September 8, 2004.
Statement of Answer filed by Respondent on or about: January 14, 2005.
Respondent signed the Uniform Submission Agreement: October 15, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; breach of fiduciary duty; negligence; negligent supervision, retention, training and hiring; violation of industry rules, including, but not limited to, NYSE's Rule 405 and NASD's Rule 2310; breach of contract; and, common law fraud. The causes of action relate to, among other things, Claimant's investment in shares of Nortel stock and stock options.

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 an unspecified amount of compensatory and punitive damages; rescission; interest at the legal rate from the date of purchase, or reasonable market return; costs; and, such other relief as deemed just and proper by the Panel.

Respondent requested that the Panel issue an Award dismissing the Statement of Claim in its entirety and assessing all forum fees and costs against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The parties 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:

Respondent is liable for its failure to properly supervise its registered representatives in violation of NASD Rules 2310 and 3010, and shall pay to Claimant compensatory damages in the amount of $8,473.30, specifically excluding pre-judgment interest.

Florida Statute 768.72(b) defines "gross negligence" as meaning that "the defendants' conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct." The Panel finds clear evidence to show that Respondent's failure to supervise its registered representatives is a violation of NASD Rules 2310 and 3010, and falls within the purview of this definition. Accordingly, the Panel finds that Respondent is liable and shall pay punitive damages to Claimant in the amount of $2,541.99.

Respondent shall pay to Claimant the sum of $250.00, representing reimbursement of the non-refundable claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Each party shall bear their own costs.

Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= $ 250.00

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, Respondent is a member firm and a party.

Member surcharge	= $1,500.00
Pre-hearing process fee	= $ 750.00
Hearing process fee	= $2,200.00
Total Member Fees	= $4,450.00

Adjournment Fees
Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

Three-Day Cancellation Fees
Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

Injunctive Relief Fees
Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

Forum Fees and Assessments
The Panel has assessed forum fees for each session conducted. 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:

Two (2) Pre-hearing sessions with a single arbitrator @ $450.00/session			= $ 900.00
Pre-hearing conferences:	December 5, 2005	1 session	
	December 9, 2005	1 session	
Two (2) Pre-hearing sessions with the Panel @ $1,000.00/session			= $2,000.00
Pre-hearing conferences:	January 21, 2005	1 session	
	April 5, 2005	1 session	
Six (6) Hearing sessions @ $1,000.00/session			= $6,000.00
Hearing Dates:	January 3, 2006	3 sessions	
	January 4, 2006	2 sessions	
	January 5, 2006	1 session	
Total Forum Fees			= $8,900.00

The Panel assessed forum fees of $4,450.00 to Claimant.
The Panel assessed forum fees of $4,450.00 to Respondent.

Administrative Costs
Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= $ 250.00
Forum Fees	= $4,450.00
Total Fees	= $4,700.00
Less payments	= $1,250.00
Balance Due NASD Dispute Resolution	= $3,450.00

Respondent is solely liable for:

Member Fees	= $4,450.00
Forum Fees	= $4,450.00
Total Fees	= $8,900.00
Less payments	= $4,450.00
Balance Due NASD Dispute Resolution	= $4,450.00

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

ARBITRATION PANEL

Nelson J. Brous	-	Public Arbitrator, Presiding Chairperson
Richard Kuper, Esq.	-	Public Arbitrator
Mark I. Scheinbaum	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ January 6, 2006
Nelson J. Brous Signature Date
Public Arbitrator, Presiding Chairperson

/s/ January 9, 2006
Richard Kuper, Esq. Signature Date
Public Arbitrator

/s/ January 6, 2006
Mark I. Scheinbaum Signature Date
Non-Public Arbitrator

January 11, 2006
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures

Nelson J. Brous
Public Arbitrator, Presiding Chairperson

1/06/2006
Signature Date

Richard Kuper, Esq.
Public Arbitrator

Signature Date

Mark I. Scheinbaum
Non-Public Arbitrator

Signature Date

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

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Richard Kuper, Esq.	-	Public Arbitrator
Mark I. Scheinbaum	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Nelson J. Brous
Public Arbitrator, Presiding Chairperson

Signature Date

1-9-06
Signature Date

Richard Kuper, Esq.
Public Arbitrator

Mark I. Scheinbaum
Non-Public Arbitrator

Signature Date

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

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Concurring Arbitrators' Signatures

Nelson J. Brous
Public Arbitrator, Presiding Chairperson

Signature Date

Richard Kuper, Esq.
Public Arbitrator

Signature Date

Mark I. Scheinbaum
Non-Public Arbitrator

1-6-05
Signature Date

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