

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

---

In the Matter of the Arbitration Between:

Cartel Pacific Limited (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and  
Kevin Wallace (Respondents)

Case Number: 98-00991

Hearing Site: New York, New York

---

Nature of the Dispute: Customer vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Claimant Cartel Pacific Limited ("Cartel") hereinafter referred to as "Claimant":  
Theodore G. Eppenstein, Esq., Eppenstein & Eppenstein, New York, NY and John G.  
Rich, Esq., Rich Intelisano LLP, New York, NY.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"): Ira N.  
Glauber, Esq., Jaffe & Asher, LLP, New York, NY and Christopher P. Hall, Esq.,  
Morgan Lewis & Bockius, LLP, New York, NY.

Respondent Kevin Wallace ("Wallace") did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: March 16, 1998.

Claimant signed the Uniform Submission Agreement: November 25, 1997.

Statement of Answer filed by Respondent Merrill Lynch on or about: April 29, 1998.

Merrill Lynch signed the Uniform Submission Agreement: April 29, 1998.

Wallace did not file a Statement of Answer or sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of customer agreement and  
breach of credit facility agreement; breach of fiduciary obligations; fraud; unauthorized  
trading; failure to supervise; negligence and gross negligence; negligent  
misrepresentation; and respondeat superior. Claimant's claim involved shares of Merrill  
Lynch Americas Income Dollar Portfolio, Class B and Class C; Alliance Global  
Investment American Income Portfolio, Class C; Merrill Lynch Mexican Income Peso  
Portfolio, Class A and Class B; and other unspecified securities.

Unless specifically admitted in its Answer, Merrill Lynch denied the allegations made in the Statement of Claim.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested unspecified compensatory and other damages, with interest; disgorgement of Respondents' compensation including the transaction costs of the wrongful liquidation; punitive damages; attorneys' fees, costs, expert and witness fees and administrative expenses; and any other and further relief the Arbitration Panel found just and equitable. At the hearing, Claimant requested compensatory damages of \$3,825,028.95 and interest of \$3,086,012.40.

Merrill Lynch requested that Claimant's Statement of Claim be dismissed in its entirety and that it be awarded its costs and attorneys' fees in defense of this matter.

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

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent Wallace has been properly served with the Statement of Claim and received due notice of the hearing and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Wallace did not file a properly executed Uniform Submission Agreement with NASD Dispute Resolution but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

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.

The following Motions, Applications, and Rulings have been filed in this matter:

<u>Date</u>	<u>Application and Disposition</u>
February 21, 2001	Parties' Joint Request That Service Be Attempted Again on Respondent Wallace.  Disposition: Granted, February 21, 2001.
November 4, 2002	Respondent Merrill Lynch's Motion to Strike and Exclude All References to Settlement Between Merrill Lynch and Third Persons.

November 15, 2002	Respondent Merrill Lynch's Application to Expand its Motion to Strike and Preclude Evidence.
November 20, 2002	Claimant's Application for an Order of Appearance of Robert Kong.  Disposition: Granted, November 29, 2002.
November 22, 2002	Respondent Merrill Lynch's Motion to Strike and Preclude (filed with NASD).  Disposition: Granted in Part and Denied in Part, December 18, 2002. Panel's Order Concerning Respondent Merrill Lynch's Motion to Strike and Preclude Evidence: (a) Exhibit B to Statement of Claim is Precluded and Exhibit A Will Not Be Considered on an Ad Hoc Basis (Precluded); (b) Not barring evidence showing that Merrill Lynch did not comply with its own policies, regulations or governing procedures with respect to any of the Lohia accounts; (c) Not preclude evidence of knowledge of Merrill Lynch's senior management and compliance department of any ongoing and pervasive improper or wrongful activities by Wallace if that was the case prior to and leading up to the opening of the Cartel Pacific account.
November 29, 2002	Respondent Merrill Lynch's Oral Application to Delay or Preclude Testimony of Manfredo and Drew.  Disposition: Denied, November 29, 2002.
April 14, 2003	Claimant's Request that Subpoena to William Waters be Issued.  Disposition: Granted, April 23, 2003.
June 5, 2003	Claimant's Motion in Support of the Use of an Interpreter for S.P. Lohia and in Support of Voir Dire by the Panel Only.  Disposition: Denied, June 12, 2003.

June 18, 2003	Claimant's Motion in Support of Jurisdiction Over Respondent Wallace.
June 18, 2003	Respondent Merrill Lynch's Motion to Deny Jurisdiction Over Respondent Wallace.  Disposition: Granted (2-1), June 25, 2003.
June 25, 2003	Claimant's Oral Application to Make a Future Motion to Reargue and Reconsider Panel's Decisions re Respondent Merrill Lynch's Application to Deny Jurisdiction Over Wallace.  Disposition: Granted, June 25, 2003.
June 26, 2003	Respondent Merrill Lynch's Proffer of Newspaper Article and Claimant's Motion to Strike Testimony re Tax Matter Investigation.  Disposition: Granted, June 26, 2003.
August 18, 2003	Claimant's renewed Motion to Confirm Jurisdiction over Respondent Wallace.  Disposition: Granted, October 1, 2003. Panel's Unanimous Denial of Respondent Merrill Lynch's Original Application to Deny Jurisdiction Over Respondent Wallace.
August 28, 2003	Respondent Merrill Lynch's Submission of <u>Stan Lee Media, Inc. v. Merrill Lynch, Pierce, Fenner &amp; Smith, Inc. et al.</u> , No. CV 03-01036, slip op. (C.D. Cal. July 30, 2003).  Disposition: Granted, October 1, 2003. Panel Will Accept Respondent Merrill Lynch's Submission re <u>Stan Lee</u> at Close of Claimant's Direct Case.
December 16, 2003	Respondent Merrill Lynch's Oral Application and Objection to Proffer of Claimant's Expert, Robert Conner.  Disposition: Sustained, December 16, 2003 with Respect to Mutual Fund Recommendations, Duties of Firm When Liquidating Account, and Market Manipulation.

December 31, 2003

Claimant's Motion for Reconsideration and to Reargue the Panel's Rulings of December 16, 2003 re Testimony of Claimant's Expert.

Disposition: Denied, January 22, 2004.

January 6, 2004

Claimant's and Respondent Merrill Lynch's Objections to Various Exhibits Used at Alhabshi Examination.

February 5, 2004

Claimant's Request for the Issuance of Subpoenas to Jonathan F. Pedersen, Esq. and Skadden, Arps, Slate, Meagher & Flom, LLP (Skadden).

Disposition: Granted, February 5, 2004.

February 12, 2004

Claimant's Application Regarding Scope of Waiver of Privilege Concerning Jonathan Pedersen, Esq. of Skadden.

Disposition: Motion became moot

March 11, 2004

Respondent Merrill Lynch's Cross Motion Regarding Stan Lee case and Amending Answer to Include *In Pari Delicto* Defense.

Disposition: Granted March 29, 2004 Respondent Merrill Lynch's Application that Its Answer Be Deemed Amended to Include *In Pari Delicto*.

April 15, 2004

Claimant's Oral Application to Submit Reply to Respondent Merrill Lynch's Submission Regarding *In Pari Delicto* and to Reargue.

Disposition: Granted, April 15, 2004. Submitted May 28, 2004.

May 28, 2004

Claimant's Motion in Opposition to Respondent Merrill Lynch's Motion to Amend Answer, and for Reconsideration and to Reargue and to Deny Amendment.

Disposition: Denied, July 9, 2004.

**AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The panel finds against Respondent Kevin Wallace on all claims against him. All claims and claims for relief against Respondent Merrill Lynch are denied, except the claims that Merrill Lynch acted negligently by failing to comply with its own rules, regulations and standards of conduct in its gross failure to diligently supervise one of its registered representatives, viz., the Respondent Kevin Wallace. The panel finds there to have been a massive, knowing and inexcusable failure to supervise attributable to those Merrill Lynch managers and/or supervisory personnel (with the notable exception of Robert Mooney, Esq.) responsible for the supervision of its Singapore branch office and employees during the period January 1, 1992 to October 31, 1995. However, the panel finds that Claimant sustained no compensable damages and, under all of the circumstance herein, should be awarded the sum of One Dollar (\$1.00) against each of the Respondents and should not be awarded any punitive damages. Accordingly, Respondents Merrill Lynch and Wallace are each liable and shall each pay Claimant \$1.00.
2. Each party will bear its, their, and/or his own costs and expenses, except that Merrill Lynch shall: (a) reimburse Claimant for attorneys' fees and their related expenses in the sum of One Million, One Hundred Seventy Three Thousand, Forty-five Dollars and twenty-six cents (\$1,173,045.26); and (b) be liable to NASD for the forum costs and filing fees, attributable to this arbitration.
3. Respondent Merrill Lynch is liable and shall pay Claimant \$250.00 as reimbursement of the non-refundable filing fee previously paid to NASD Dispute Resolution.
4. Any and all relief and/or claims for relief not specifically addressed and/or provided for herein are 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	= \$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, Merrill Lynch is a party.

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

January 23, 2002, adjournment by Claimant	= \$1,000.00
May 18, 2005, joint request by Claimant and Merrill Lynch	= \$1,000.00

#### **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:

Ten (10) Pre-hearing sessions with a single arbitrator @ \$300.00	= \$ 3,000.00
Pre-hearing conferences:	
June 14, 2001	1 session
August 1, 2001	1 session
August 9, 2001	1 session
November 12, 2001	1 session
June 7, 2002	1 session
October 23, 2002	1 session
November 29, 2002	1 session
June 4, 2004	1 session
January 4, 2005	1 session
August 11, 2005	1 session

Twenty (20) Pre-hearing sessions with Panel @ \$1,000.00 = \$ 20,000.00

Pre-hearing conferences:

March 20, 2000	1 session
January 10, 2001	2 sessions
February 21, 2001	2 sessions
July 3, 2001	1 session
October 31, 2001	2 sessions
May 1, 2002	2 sessions
July 9, 2002	1 session
July 22, 2002	1 session
August 29, 2002	1 session
October 24, 2002	1 session
October 1, 2003	2 sessions
March 9, 2004	1 session
October 28, 2004	1 session
April 18, 2005	1 session
August 25, 2005	1 session

One Hundred Eight (108) Hearing sessions @ \$1,000.00 = \$108,000.00

Hearing Dates:

September 11, 2002	2 sessions
September 12, 2002	3 sessions
November 6, 2002	2 sessions
November 7, 2002	2 sessions
November 8, 2002	2 sessions
November 13, 2002	2 sessions
November 14, 2002	2 sessions
November 15, 2002	2 sessions
December 11, 2002	2 sessions
December 12, 2002	2 sessions
December 13, 2002	2 sessions
December 18, 2002	2 sessions
December 19, 2002	2 sessions
December 20, 2002	2 sessions
March 26, 2003	2 sessions
March 27, 2003	2 sessions
May 7, 2003	2 sessions
May 8, 2003	2 sessions
May 28, 2003	2 sessions
May 29, 2003	2 sessions
June 10, 2003	2 sessions
June 11, 2003	2 sessions
June 12, 2003	3 sessions
June 24, 2003	2 sessions
June 25, 2003	2 sessions
June 26, 2003	3 sessions



November 4, 2003	2 sessions
November 5, 2003	2 sessions
November 6, 2003	3 sessions
December 16, 2003	2 sessions
December 17, 2003	2 sessions
December 18, 2003	2 sessions
January 6, 2004	2 sessions
January 7, 2004	2 sessions
January 13, 2004	2 sessions
January 15, 2004	2 sessions
January 20, 2004	2 sessions
January 22, 2004	2 sessions
February 3, 2004	2 sessions
February 5, 2004	2 sessions
February 10, 2004	2 sessions
February 12, 2004	2 sessions
March 11, 2004	2 sessions
April 15, 2004	2 sessions
July 28, 2004	2 sessions
July 29, 2004	2 sessions
November 2, 2004	2 sessions
November 4, 2004	2 sessions
November 30, 2004	2 sessions
February 3, 2005	2 sessions
September 12, 2005	2 sessions
September 13, 2005	2 sessions

---

Total Forum Fees	= \$131,000.00
------------------	----------------

The Panel has assessed one hundred percent of the forum fees or \$131,000.00 against Merrill Lynch.

**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.

- |  |            |
|--|------------|
| 1. Claimant, additional arbitrator list      | = \$500.00 |
| 2. Merrill Lynch, additional arbitrator list | = \$500.00 |

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fees	= \$1,500.00
<u>Administrative Costs</u>	<u>= \$ 500.00</u>
Total Fees	= \$2,250.00
<u>Less payments</u>	<u>= \$1,350.00</u>
Balance Due NASD Dispute Resolution	= \$ 900.00

2. Merrill Lynch is solely liable for:

Member Fees	= \$ 3,800.00
Adjournment Fee	= \$ 500.00
Forum Fees	= \$131,000.00
<u>Administrative Costs</u>	<u>= \$ 500.00</u>
Total Fees	= \$135,800.00
<u>Less payments</u>	<u>= \$ 7,300.00</u>
Balance Due NASD Dispute Resolution	= \$128,500.00

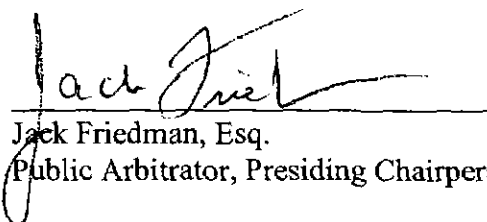
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
---

ARBITRATION PANEL

Jack Friedman, Esq.	-	Public Arbitrator, Presiding Chair
Fred S. Pieroni	-	Public Arbitrator
Romaine L. Gardner, Esq.	-	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.

  
\_\_\_\_\_  
Jack Friedman, Esq.  
Public Arbitrator, Presiding Chairperson

December 6, 2005  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Fred S. Pieroni  
Public Arbitrator

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

\_\_\_\_\_  
Romaine L. Gardner, Esq.  
Non-Public Arbitrator

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

DECEMBER 15, 2005  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

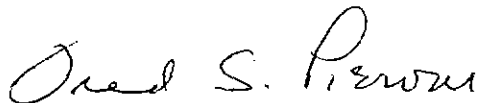
Jack Friedman, Esq.	-	Public Arbitrator, Presiding Chair
Fred S. Pieroni	-	Public Arbitrator
Romaine L. Gardner, Esq.	-	Non-Public Arbitrator

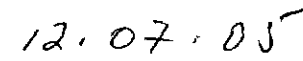
**Concurring Arbitrators' Signatures**

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.

\_\_\_\_\_  
Jack Friedman, Esq.  
Public Arbitrator, Presiding Chairperson


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

  
\_\_\_\_\_  
Fred S. Pieroni  
Public Arbitrator

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

\_\_\_\_\_  
Romaine L. Gardner, Esq.  
Non-Public Arbitrator

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

  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Jack Friedman, Esq.	-	Public Arbitrator, Presiding Chair
Fred S. Pieroni	-	Public Arbitrator
Romaine L. Gardner, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

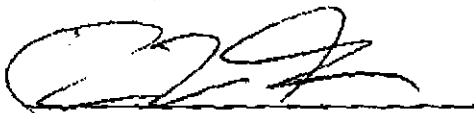
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

\_\_\_\_\_  
Jack Friedman, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Fred S. Pieroni  
Public Arbitrator

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

  
\_\_\_\_\_  
Romaine L. Gardner, Esq.  
Non-Public Arbitrator

12/14/05  
\_\_\_\_\_  
Signature Date

DECEMBER 15, 2005  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)