

2002 WL 1944505 (N.A.S.D.)

National Association of Securities Dealers, Inc.

IN THE MATTER OF THE ARBITRATION BETWEEN:
LOUIS W. CAPRIO, JR. AND STEPHEN R. MADOW, (CLAIMANTS) v.
MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., (RESPONDENT)

Docket Number 00-05751

Date of Service (For NASD office use only): July 18, 2002

Signature Date: July 17, 2002

***1 Case Type: Securities**

Award Amount: \$0.00

Award Date: July 18, 2002

Arbitrator: Nancy E. Watters, Esq.

Arbitrator: Mary C. Kelleher

Arbitrator: Jack A. Marshall

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES: Claimants, Louis W. Caprio, Jr. ("Caprio") and Stephen R. Madow ("Madow"), hereinafter collectively referred to as "Claimants": [Michael A. Collora](#), Esq., Dwyer & Collora, LLP, Boston, MA. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": [Mark H. Moore](#), Esq., Jaffe & Asher LLP, New York, NY.

CASE INFORMATION: Statement of Claim filed on or about: December 26, 2000.

Caprio signed the Uniform Submission Agreement: December 18, 2000.

Madow signed the Uniform Submission Agreement: December 21, 2000.

Statement of Answer filed by Respondent on or about: February 26, 2001.

Respondent signed the Uniform Submission Agreement: February 23, 2001.

CASE SUMMARY: Claimants asserted the following causes of action: failure to advise Claimants of concealed interest rate; misrepresentation; violation of Title 17, U.S.C. 78j and Rule 10b-16 of the Securities and Exchange Act of 1934; common law negligence; and fraud under M.G.L.c.93A. Claimants' claim involved derivative contracts, pre-paid equity forward contracts and Becton Dickinson stock.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim, in its entirety, fails to state a claim against Respondent upon which relief may be granted; Claimants, by their own acts and omissions, are estopped from recovering any alleged loss from Respondent; Claimants are barred from recovering any alleged loss from Respondent by the doctrines of ratification and waiver; Claimants are barred from recovery by their own contributory negligence or comparative negligence, including that of their accountants and attorneys; Claimants are barred from recovering any alleged loss from Respondent by their own assumption of risk; and Claimants' claim under Rule 10b-16, promulgated under the Securities and Exchange Act of 1934, is barred by the applicable statute of limitations.

RELIEF REQUESTED: Claimants requested compensatory damages in the approximate amount of \$500,000.00 for Caprio and \$450,000.00 for Madow, plus interest from November 17, 2000, and attorneys' fees. Alternatively, Claimants requested the benefit of the bargain promised by Respondents' representatives, that is, that Claimants would receive not less than \$30.127 for each of their shares of Becton Dickinson.

***2** Respondent requested that the Statement of Claim be dismissed in its entirety, and that Respondent be awarded the costs

incurred in this arbitration, including reasonable attorneys' fees.

OTHER ISSUES CONSIDERED AND 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.

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. Claimants claims be and hereby are dismissed in their entirety.
2. All other requests for relief, including Respondent's request for attorneys fees, are hereby 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 = \$ 375.00

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. In this matter, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge =	\$ 2,000.00
Pre-hearing process fee =	\$ 600.00
Hearing process fee =	\$ 3,500.00

Adjournment Fees: Adjournments requested during these proceedings:

Dec. 11, 17, 18 & 19, 2001, adjournment by Respondent = WAIVED

Forum Fees and Assessments: The Panel assesses forum fees for each hearing session conducted. A hearing 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:

One (1) Pre-hearing session with Panel x \$1,200.00 = \$1,200.00

Pre-hearing conference: May 30, 2001 1 session

Eighteen (18) Hearing sessions x \$1,200.00 = \$21,600.00

Hearing Dates:	February 25, 2002	2 sessions
	February 26, 2002	2 sessions
	February 27, 2002	2 sessions
	March 7, 2002	2 sessions
	March 8, 2002	2 sessions
	April 29, 2002	2 sessions
	April 30, 2002	2 sessions
	May 16, 2002	2 sessions
	May 17, 2002	2 sessions

Total Forum Fees = \$22,800.00

- *3 1. The Panel has assessed \$11,400.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$11,400.00 of the forum fees against Respondent.

Fee Summary: 1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee = \$ 375.00

Forum Fees = \$11,400.00

Total Fees = \$11,775.00

Less payments = \$ 1,575.00

Balance Due NASD Dispute Resolution = \$10,200.00

2. Respondent be and hereby is solely liable for:

Member Fees =	\$ 6,100.00
Forum Fees =	\$11,400.00
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Total Fees =	\$17,500.00
Less payments =	\$ 4,600.00
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Balance Due NASD Dispute Resolution =	\$12,900.00

All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL: Nancy E. Watters, Esq.-Public Arbitrator, Presiding Chair

Mary C. Kelleher-Public Arbitrator

Jack A. Marshall-Non-Public Arbitrator

Concurring Arbitrators' Signatures

[Nancy E. Watters, Esq.](#)
Public Arbitrator, Presiding Chair

Mary C. Kelleher
Public Arbitrator

Jack A. Marshall
Non-Public Arbitrator

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