

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Jacqueline Silbermann  
Administrative Order

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GASTON BANNA, JACQUELINE BANNA  
and ALEPCO, LTD.,

Petitioners,

- v -

INDEX NO. 603111/2007

MERRILL LYNCH, PIERCE, FENNER &  
SMITH, INC.,

Respondent.

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**Administrative Order:**

By letter dated October 11, 2007, counsel for respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. applies for the transfer of this action to the Commercial Division pursuant to Uniform Rule 202.70. The court is advised that counsel for the petitioners consents to this application, and it is timely under Uniform Rule 202.70(e).

It appears that when the Request for Judicial Intervention was filed by petitioners' counsel on October 5th, they indicated that the relief sought was vacatur of an arbitration award and they designated the nature of this action as an Article 75 special proceeding. Accordingly, the proceeding was assigned to the Hon. Leland DeGrasse (I.A.S. Part 25), who has scheduled an October 22nd hearing on petitioner's order to show cause.

Uniform Rule 202.70(b)(1) provides that actions in which the principal claims involve or consist of "breach of contract or breach of fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings" will be heard in the Commercial Division provided the \$100,000 monetary threshold for New York County is met or equitable or declaratory relief is sought. Also included are "[a]pplications to stay or compel arbitration and affirm or disaffirm arbitration awards . . . involving any of the foregoing commercial issues -- without consideration of the monetary threshold." See Uniform Rule 202.70(b)(12).

There is no question that this action meets the standards for assignment to the Commercial Division, because the underlying arbitration concerned petitioners' claims

for breach of contract, breach of fiduciary duty, misrepresentation and fraud in connection with their purported loss of over \$4.6 million in the stock market allegedly caused by defendant's improper investment advice, fraudulent research reports, and unauthorized trading in petitioners' customer accounts.

Accordingly, the Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division, who shall schedule a hearing on petitioners' order to show cause (mot. seq. 001) at the earliest date available.

Dated: October 15, 2007

ENTER: \_\_\_\_\_, A.J.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION