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**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimants

Ronald Anderson and  
Sarah Anderson

Case Number: 00-04521

Names of the Respondents

Merrill Lynch, Pierce, Fenner, & Smith, Inc. and  
Karyn Griffin

Hearing Site: Albuquerque, New Mexico

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**REPRESENTATION OF PARTIES**

Claimants Ronald Anderson and Sarah Anderson, hereinafter referred to as "Claimants": Clinton W. Marrs, Esq., of Eastham, Johnson, Monnheimer & Jontz, P.C., located in Albuquerque, New Mexico.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., (Merrill Lynch) and Karyn Griffin (Griffin) hereinafter referred to as "Respondents": Jill M. Del Monico, Esq., of Morgan, Lewis & Bockius L.L.P, located in New York, New York.

**CASE INFORMATION**

Claimants filed a Joint Statement of Claim on: October 11, 2000.

Claimants, Ronald Anderson and Sarah Anderson signed the Uniform Submission Agreement: August 6, 2000

Respondents filed a joint Statement of Answer: June 12, 2001

Respondents did not sign Uniform Submission Agreements.

**CASE SUMMARY**

1. Claimants asserted the following causes of action: breach of fiduciary duty;
2. negligent misrepresentation of fact; violations of N.M. Statute Ann. Section 58-13B-30;
3. breach of contract; 1933 Act. Section 12(2); New Mexico Control person liability;
4. Federal control person liability; negligent supervision;
5. Respondent Superior; Unjust enrichment, fraud; detrimental reliance.

These causes of action relate to the transfer of common stock.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants' claims are barred due to waiver, estoppel, ratification and laches;
2. Claimants fail to state a claim upon which relief may be granted;
3. Claimants were contributory negligent;

4. Claimants' claims are barred based upon the applicable statute of limitations.

### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$ 96,790.00
Punitive Damages	\$ Unspecified
Interest	\$ Unspecified
Attorneys' Fees	\$ Unspecified
Other Costs	\$ Unspecified

Respondent requested that the claims against them be dismissed in their entirety.

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

Respondents Merrill Lynch and Griffin did not file with NASD Dispute Resolution properly executed submission to arbitration but is are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

### **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 Ronald Andersons' and Sarah Andersons' Claim's against Respondents Merrill Lynch, Pierce, Fenner & Smith are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied: and,
3. Any and all cost not specifically enumerated herein shall be paid by the party who incurred them.

### **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 = \$225.00

### 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, Pierce Fenner & Smith, Inc., is the Respondent firm.

Member surcharge	= \$ 1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 1,500.00

### 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:

One (1) Pre-hearing session with Panel @ \$750.00	= \$750.00
Pre-hearing conference: April 8, 2002      1 session	
Three (3) Hearing sessions @ \$750.00	= \$2,250.00
Hearing Dates:      September 19, 2002    2 sessions	
September 20, 2002    1 session	
<hr/> Total Forum Fees	<hr/> = \$3000.00

1. The Panel has assessed \$1,500.00 of the forum fees to Claimants Ronald Anderson and Sarah Anderson jointly and severally.
2. The Panel has assessed \$1,500.00 of the forum fees to Respondents Merrill Lynch and Karyn Griffin jointly and severally.

### Fee Summary

Claimants Ronald Anderson and Karyn Anderson are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,500.00
Total Fees	= \$ 1,725.00
Less payments	= \$ 975.00
Balance Due to NASD Dispute Resolution	= \$ 750.00

Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 3,100.00
Total Fees	= \$ 3,100.00
Less payments	= \$ 3,100.00
Balance due to NASD Dispute Resolution	= \$ 00

Respondents Merrill Lynch and Karyn Griffin are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 1,500.00
Total fees	= \$ 1,500.00
<u>Less payments</u>	= \$ 00
Balance due to NASD Dispute Resolution	= \$ 1,500.00

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

**ARBITRATION PANEL**

Eugene W. Bronski, Esq.,  
Jack G. Till  
Carl E. Gutman

Public Arbitrator, Presiding Chairperson  
Non-Public Arbitrator  
Public Arbitrator

**Concurring Arbitrators' Signatures**

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Eugene W. Bronski  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Jack G. Till  
Public Arbitrator

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

\_\_\_\_\_  
Carl E. Gutman  
Non-Public Arbitrator

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

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

NASD Dispute Resolution  
Arbitration No. 00-04521  
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Forum Fees	= \$ 1,500.00
Total fees	= \$ 1,500.00
Less payments	= \$ 00
Balance due to NASD Dispute Resolution	= \$ 1,500.00

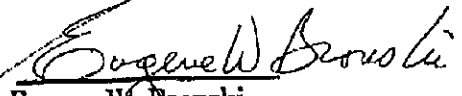
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Public Arbitrator, Presiding Chairperson

11-12-02  
Signature Date

\_\_\_\_\_  
Jack G. Till  
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