

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

---

**In the Matter of the Arbitration Between:**

Sandra J. Rosen, individually and as Trustee of the Sandra J. Rosen Revocable Living Trust U/A dated December 6, 2001, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Donald C. Garman, Respondents

Case Number: 02-05204

Hearing Site: San Francisco, California

---

**REPRESENTATION OF PARTIES**

**For Claimant:**

Patrick Baldwin, Esq.  
Christine McNamara, Esq.  
Menlo Park, California

**For Respondents:**

Philip A. McLeod, Esq.  
Benjamin W. White, Esq.  
Keesal, Young & Logan  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: September 3, 2002

Claimant's Uniform Submission Agreement signed: undated

Joint Statement of Answer filed by Respondents: November 8, 2002

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement signed: November 9, 2002

Respondent Donald C. Garman's Uniform Submission Agreement signed: January 21, 2003

### **CASE SUMMARY**

Claimant alleged fraud, violations of NASD Conduct Rules 2110, 2120, 2130 (unsuitability), and 3010 (failure to supervise), violation of California Corporations Code § 25400, et seq., violation of Section 10(b) of the 1934 Securities and Exchange Act and Rule 10b-5 promulgated there under, intentional misrepresentation, negligent misrepresentation, churning, unauthorized trading, breach of fiduciary duty, respondeat superior liability, controlling person liability, breach of contract, and negligent infliction of emotional distress, involving various common stock transactions.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$290,060.00, unspecified punitive damages, rescission, interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of all reference to the above captioned arbitration from Respondent Donald C. Garman's registration records maintained by the NASD Central Registration Depository ("CRD"), and costs.

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

On November 5, 2002, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On December 27, 2002, Respondents' counsel signed a Waiver Agreement on behalf of Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Donald C. Garman expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

At the hearing, the parties stipulated to removing the allegation of unsuitability from the Claimant's Statement of Claim.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Donald C. Garman's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Donald C. Garman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The parties shall bear their respective costs, including attorney's fees.
4. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
--------------------------	-------------

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session(s) with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: June 13, 2003 1 session	

Eight (8) Hearing sessions @ \$1,125.00/session	= \$ 9,000.00
Hearings: October 14, 2003 2 sessions	
October 15, 2003 2 sessions	
October 16, 2003 2 sessions	
October 17, 2003 2 sessions	

---

<b>Total Forum Fees</b>	<b>= \$10,125.00</b>
-------------------------	----------------------

1. The Panel assessed \$5,062.50 of the forum fees to Claimant.
2. The Panel assessed \$5,062.50 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,062.50
Total Fees	= \$ 5,362.50
Less payments	= \$( 1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,937.50</b>

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$( 5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Donald C. Garman are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 5,062.50
Less payments	= \$( 0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,062.50</b>

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

**ARBITRATION PANEL**

<b>Robert L. Liu, Esq.</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>John P. Sparrow</b>	-	<b>Public Arbitrator</b>
<b>Carlos Richard Mangum</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

---

Robert L. Liu, Esq.  
Chair, Public Arbitrator

---

Signature Date

---

John P. Sparrow, Esq.  
Public Arbitrator

---

Signature Date

---

Carlos Richard Mangum  
Non-Public Arbitrator

---

Signature Date


---

Date of Service

**ARBITRATION PANEL**

Robert L. Liu, Esq.	-	Public Arbitrator, Presiding Chair
John P. Sparrow	-	Public Arbitrator
Carlos Richard Mangum	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Robert L. Liu, Esq.  
Chair, Public Arbitrator

October 21, 2003  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
John P. Sparrow, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Carlos Richard Mangum  
Non-Public Arbitrator

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

10/22/03  
\_\_\_\_\_  
Date of Service

**ARBITRATION PANEL**

<b>Robert L. Liu, Esq.</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>John P. Sparrow</b>	-	<b>Public Arbitrator</b>
<b>Carlos Richard Mangum</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

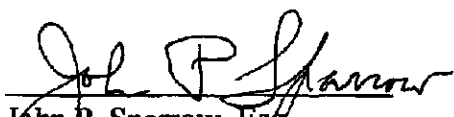
---

Robert L. Liu, Esq.  
Chair, Public Arbitrator

---

Signature Date

---

  
John P. Sparrow, Esq.  
Public Arbitrator

---

10/21/03  
Signature Date

---

Carlos Richard Mangum  
Non-Public Arbitrator

---

Signature Date

---

10/22/03  
Date of Service

**ARBITRATION PANEL**

Robert L. Liu, Esq.	-	Public Arbitrator, Presiding Chair
John P. Sparrow	-	Public Arbitrator
Carlos Richard Mangum	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

---

Robert L. Liu, Esq.  
Chair, Public Arbitrator

---


Signature Date

---

John P. Sparrow, Esq.  
Public Arbitrator

---

Signature Date

  
Carlos Richard Mangum  
Non-Public Arbitrator

10-22-03  
Signature Date

10/22/03  
Date of Service