

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

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In the Matter of the Arbitration Between:

Name of the Claimants

Case Number: 02-05526

W. Alex and Nancy A. Willis, JTWROS

Name of the Respondent

Hearing Site: Raleigh, North Carolina

Merrill Lynch Pierce Fenner & Smith Inc.

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Nature of the Dispute: Customers vs. Member.

REPRESENTATION OF PARTIES

Claimants W. Alex and Nancy A. Willis, JTWROS, hereinafter collectively referred to as "Claimants", were not represented by counsel.

Respondent Merrill Lynch Pierce Fenner & Smith Inc., hereinafter referred to as "Respondent", was represented by Scott Sherman, Esq. and Lawrence Polk, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on September 11, 2002.

Claimants signed the Uniform Submission Agreement on September 12, 2002.

Statement of Answer filed by Respondent on November 27, 2002.

A representative of Respondent executed an undated Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted a cause of action for fraudulent misrepresentation. This cause of action relates to the purchase of Enron Corporation's 7.855 June 2003 note and Enron Cap Resources LP.

Unless specifically admitted in its Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; laches, unclean hands and estoppel; contributory negligence; assumption of risk; and, failure to mitigate.

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages

\$50,000.00

Respondent in its Statement of Answer requested that the Arbitrator reject Claimants' Statement of Claim in its entirety and order that all costs of this arbitration be borne by Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing, Respondent made a motion to exclude evidence, which was denied by the Arbitrator.

AWARD

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

1. Respondent is liable to and shall pay to Claimants compensatory damages in the amount of \$6,426.00, plus simple interest at a rate of 8% per annum from September 11, 2002 until the date of payment in full;
2. Respondent is liable to and shall pay to Claimants punitive damages in the amount of \$1.00, pursuant to North Carolina General Statute 1D-15(a)(3) for Respondent's, through its agents, willful misconduct;
3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
4. Any and all relief not specifically addressed herein is denied in its entirety.

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 = \$ 175.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00
Total Member Fees	= \$2,625.00

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: June 30, 2003 1 session

Two (2) Hearing sessions @ \$450.00 = \$ 900.00  
Hearing Date: December 15, 2003 2 sessions

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Total Forum Fees = \$1,350.00

1. The Arbitrator has assessed \$1,350.00 of the forum fees to Respondent.

EEE SUMMARY

1. Claimant is assessed the following fees:

Initial Filing Fee	= \$ 175.00
Total Fees	= \$ 175.00
Less payments	= \$ 625.00
Refund Owed Claimant	= \$ 450.00

2. Respondent is assessed the following fees:

Member Fees	= \$2,625.00
Forum Fees	= \$1,350.00
Total Fees	= \$3,975.00
Less payments	= \$2,625.00
Balance Due NASD Dispute Resolution	= \$1,350.00

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

ARBITRATION PANEL

Mark A. Finkelstein, Esq.

- Public Arbitrator, Presiding Panelist

Arbitrator's Signature

Mark Anderson Finkelstein

Mark A. Finkelstein, Esq.

Public Arbitrator, Presiding Panelist

12/30/2003

Signature Date

December 30, 2003

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