

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

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In the Matter of the Arbitration Between:

*Manual S. Andrade and Vivian Andrade, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Paul J. Lukas, and Denise M. Lukas, Respondents*

Case Number: 02-06398

Hearing Site: San Diego, California

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Nature of the Dispute: Customers vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimants:

Steven B. Lehat, Esq.  
Law Office of Steven B. Lehat  
Irvine, California

For Respondents:

Robert B. Ericson, Esq.  
Bingham McCutchen LLP  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim received: October 28, 2002

Claimants' Joint Uniform Submission Agreement signed: October 16, 2002

Joint Statement of Answer filed by Respondents: January 23, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement signed: November 27, 2002

Respondent Paul J. Lukas' Uniform Submission Agreement signed: June 2, 2003

Respondent Denise M. Lukas' Uniform Submission Agreement signed: May 29, 2003

### **CASE SUMMARY**

Claimants alleged breach of fiduciary duty, suitability, negligence, misrepresentation, non-disclosures, omissions of fact, failure to supervise, unauthorized trading, churning, and elder abuse. The dispute involved various securities.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$376,000.00 plus commissions paid for the investments in dispute, punitive damages in the amount of \$1,128,000.00, elder abuse damages in the amount of \$1,128,000.00, interest in the amount of \$263,200.00, attorney's fees, and arbitration costs.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety. Additionally, Respondents Paul J. Lukas and Denise M. Lukas requested this matter be expunged from their CRD records.

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

On November 21, 2002, Claimants and Claimants' 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 March 17, 2003 Respondents' 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.

Prior to the hearing, Respondents submitted a Motion in Limine to Exclude the Dinallo Affidavit. The motion was not ruled on prior to the hearing. Respondents renewed the motion at the hearing. After hearing argument on the motion, the Panel granted the motion.

Prior to the hearing, Claimants withdrew their Motion to Amend the Statement of Claim. The motion was not renewed or presented at the hearing.

At the hearing in January 2004, Respondents' Motion to File an Amended Statement of Answer was granted.

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) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Paul J. Lukas' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Paul J. Lukas must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Denise M. Lukas' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Denise M. Lukas must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 5) 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	= \$ 500.00
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#### **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	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 8,550.00</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 Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: May 21, 2003 1 session	

Nine (9) Hearing sessions @ \$1,200.00/session	= \$10,800.00
Hearings: January 20, 2004 1 session	
January 21, 2004 2 sessions	
January 22, 2004 2 sessions	
March 18, 2004 2 sessions	
March 19, 2004 2 sessions	

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<b>Total Forum Fees</b>	<b>= \$12,000.00</b>
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1. The Panel assessed \$6,000.00 of the forum fees jointly and severally to Claimants Manual S. Andrade and Vivian Andrade.
2. The Panel assessed \$6,000.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

**Fee Summary**

1. Claimants Manual S. Andrade and Vivian Andrade are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 6,000.00
Total Fees	= \$ 6,500.00
<u>Less payments</u>	= \$( 1,700.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,800.00</b>

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

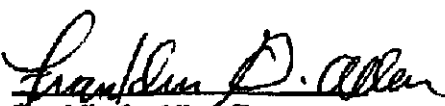
Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 6,000.00
Total Fees	= \$14,550.00
<u>Less payments</u>	= \$(8,550.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 6,000.00</b>

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

Franklin C. Allen, Esq.	-	Public Arbitrator, Presiding Chair
Ronald N. Roth	-	Public Arbitrator
Carl Van Winkle	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Franklin C. Allen, Esq.  
Chair, Public Arbitrator

3-23-2004  
Signature Date

\_\_\_\_\_  
Ronald N. Roth  
Public Arbitrator

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

\_\_\_\_\_  
Carl Van Winkle  
Non-Public Arbitrator

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

March 23, 2004  
Date of Service

ARBITRATION PANEL

Franklin C. Allen, Esq.	-	Public Arbitrator, Presiding Chair
Ronald N. Roth	-	Public Arbitrator
Carl Van Winkle	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Franklin C. Allen, Esq.  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Ronald N. Roth  
Public Arbitrator

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

  
\_\_\_\_\_  
Carl Van Winkle  
Non-Public Arbitrator

3/23/04  
Signature Date

March 23, 2004  
Date of Service

**ARBITRATION PANEL**

Franklin G. Allen, Esq.	-	Public Arbitrator, Presiding Chair
Ronald N. Roth	-	Public Arbitrator
Carl Van Winkle	-	Non-Public Arbitrator

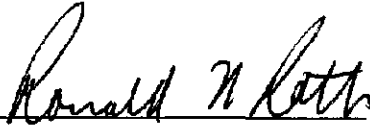
**Concurring Arbitrators' Signatures**

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Franklin G. Allen, Esq.  
Chair, Public Arbitrator

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Signature Date

  
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Ronald N. Roth  
Public Arbitrator

3-24-04  
\_\_\_\_\_  
Signature Date

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Carl Van Winkle  
Non-Public Arbitrator

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Signature Date

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Date of Service