

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

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

**Charles T. and Laura L. Von Der Ahe, The C. Von Der Ahe Separate Property Trust, Claimants  
v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Carey A. Franks, Respondents**

**Case Number: 02-06447**

**Hearing Site: Los Angeles, California**

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**Nature of the Dispute: Customers v. Member and Associated Person**

**REPRESENTATION OF PARTIES**

**For Claimants:**

**Samuel Reese, Esq.  
Barry R. Laubscher, Esq.  
Daar & Newman P.C.  
Newport Beach, California**

**For Respondents:**

**Thomas L. Taylor, Esq.  
Marcela L. Cuadrado, Esq.  
Morgan Lewis & Bockius, LLP  
Los Angeles, California**

**CASE INFORMATION**

**Statement of Claim filed: October 2, 2002**

**Claimants' Joint Uniform Submission Agreement signed: October 2, 2002**

**Joint Statement of Answer filed by Respondents: March 7, 2003**

**Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Uniform Submission Agreement  
signed: December 30, 2002**

**Respondent Carey A. Franks' Uniform Submission Agreement signed: March 5, 2003**

### **CASE SUMMARY**

Claimants alleged breach of contract, breach of fiduciary duty, unsuitability, misrepresentation and non-disclosure, failure to disclose material facts, negligence, and failure to supervise. Claimants' allegations involved the purchase on margin and alleged over-concentration of Qualcomm stock in their accounts.

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

### **RELIEF REQUESTED**

Claimants requested \$1,000,000.00 in compensatory damages, \$1,000,000.00 in punitive damages, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and costs.

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

On August 8, 2003, 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waivers of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On December 6, 2004, Respondents filed a Motion to Dismiss. Claimants filed an opposition on January 5, 2005. The matter was set for hearing by oral argument before the full panel and such hearing was conducted on February 8, 2005. After due deliberation, the Panel denied the motion without prejudice.

On June 29, 2005, at the close of Claimants' case, Respondent moved the Panel to dismiss the Claimants' claims based upon Claimants' failure to submit sufficient evidence to sustain their causes of action. After due deliberation, the Panel denied the motion.

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 Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Carey A. Franks' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Carey A. Franks 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 = \$ 500.00

#### **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	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$5,000.00
<b>Total Member Fees</b>	<b>= \$8,550.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

June 7-11, 2004 adjournment requested by the Parties = \$1,200.00

1. The Panel assessed \$600.00 of the adjournment fee jointly and severally to Claimants.
2. The Panel assessed \$600.00 of the adjournment fee jointly and severally to Respondents.

#### **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:

Three (3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$3,600.00
Pre-hearing conferences:	
November 03, 2003	1 session
February 08, 2005	1 session
April 26, 2005	1 session

Nine (9) Hearing sessions @ \$1,200.00/session = \$10,800.00

Hearings:	October 25, 2004	1 session
	March 21, 2005	2 sessions
	March 22, 2005	2 sessions
	March 25, 2005	2 sessions
	June 29, 2005	2 sessions

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**Total Forum Fees** = \$14,400.00

1. The Panel assessed \$7,200.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$7,200.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimants Charles T. Von Der Ahe, Laura L. Von Der Ahe, and The C. Von Der Ahe Separate Property Trust are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 7,200.00
Total Fees	= \$ 8,300.00
<u>Less payments</u>	<u>= \$ (2,025.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 6,275.00</b>
2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ (8,550.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Carey A. Franks are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 7,200.00
Total Fees	= \$ 7,800.00
<u>Less payments</u>	<u>= \$ (0.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 7,800.00</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.

*Daniel David Kopman, Esq.*  
*George M. Wiener, Esq.*  
*Michael G. Clark*

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*Public Arbitrator, Presiding Chair*  
*Public Arbitrator*  
*Non-Public Arbitrator*

Concurring Arbitrators' Signatures

  
\_\_\_\_\_  
Daniel David Kopman, Esq.  
Chair, Public Arbitrator

6/30/05  
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Signature Date

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George M. Wiener, Esq.  
Public Arbitrator

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Signature Date

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Michael G. Clark  
Non-Public Arbitrator

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Signature Date

June 30, 2005  
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Date of Service


ARBITRATION PANEL

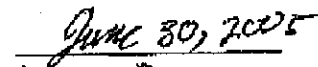
<i>Daniel David Kopman, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
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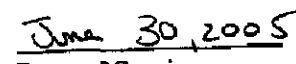
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Michael G. Clark  
Non-Public Arbitrator

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Signature Date

  
Date of Service

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<i>George M. Wiener, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Michael G. Clark</i>	-	<i>Non-Public Arbitrator</i>


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