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

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-00404

Joseph D. Farish, Jr., individually, and as  
General Partner of the Farish Family Limited  
Partnership

Name of the Respondent

Hearing Site: Boca Raton, Florida

Merrill Lynch, Pierce, Fenner & Smith, Inc.

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Joseph D. Farish, Jr., individually, and as General Partner of the Farish Family Limited Partnership, hereinafter collectively referred to as "Claimants": Randall W. Henley, Esq., West Palm Beach, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Bennett Falk, Esq. and Julie M. Russo, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 16, 2003.

Claimants signed, but did not date, the Uniform Submission Agreement.

Statement of Answer filed by Respondent on or about: April 18, 2003.

Respondent signed the Uniform Submission Agreement: March 5 2003.

**CASE SUMMARY**

Claimants asserted the causes of action of breach of fiduciary duty and negligent misrepresentation. The causes of action relate to the purchase and sale of shares of Enron stock in Claimants' accounts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$70,782.00, plus punitive damages, interest and costs.

Respondent requested that the Panel enter an award dismissing Claimants' claims in their entirety and any other relief deemed just and proper. In addition, Respondent asserted that it intended to seek an award of attorneys' fees and costs from a court of competent jurisdiction under Sections 517.211(6) and 57.105 of the Florida Statutes.

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

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

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

Respondent is liable on the claim of breach of fiduciary duty and shall pay to Claimants compensatory damages in the amount of \$35,000.00, plus interest at the rate of 6% per annum which shall begin to accrue twenty (20) days after the Award is served and continue to accrue until the date of payment of the Award.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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
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#### **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 event giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

#### **Adjournment Fees**

No requests for adjournments were filed in this matter.

#### **Injunctive Relief Fees**

No injunctive relief fees were incurred in this matter.

**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 the Panel @ \$750.00 = \$ 750.00  
Pre-hearing conference date: September 24, 2003 1 session

Two (2) Hearing sessions @ \$750.00 = \$1,500.00

Hearing Date: February 3, 2004 2 sessions

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Total Forum Fees = \$2,250.00

The Panel has assessed \$1,125.00 of the forum fees jointly and severally to Claimants.  
The Panel has assessed \$1,125.00 of the forum fees to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,350.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 375.00

Respondent is solely liable for:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 4,675.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

**ARBITRATION PANEL**

John J. Hearn, Esq.	-	Public Arbitrator, Presiding Chairperson
Arnold B. Galperin	-	Public Arbitrator
Robert M. Schwedel	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

02/04/04

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John J. Hearn, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

/s/

02/04/04

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Arnold B. Galperin  
Public Arbitrator

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Signature Date

/s/

02/04/04

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Robert M. Schwedel  
Non-Public Arbitrator

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Signature Date

02/04/04


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Date of Service (For NASD Dispute Resolution use only)

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Arbitration No. 03-00404  
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Concurring Arbitrators' Signatures

  
John J. Hearn Esq.  
Public Arbitrator, Presiding Chairperson

Feb. 4, 2004  
Signature Date

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Arnold B. Galperin  
Public Arbitrator

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

\_\_\_\_\_  
Robert M. Schwedel  
Non-Public Arbitrator

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

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John J. Hearn, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Arnold B. Galperin  
Public Arbitrator

Signature Date



Robert M. Schwedel  
Non-Public Arbitrator

2/4/04  
Signature Date

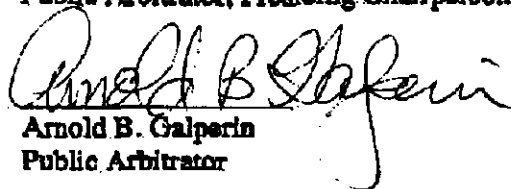
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John J. Hearn, Esq.  
Public Arbitrator, Presiding Chairperson

  
Arnold B. Galperin  
Public Arbitrator

Signature Date

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Signature Date

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Signature Date

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