

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

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In the Matter of the Arbitration Between:

Names of the Claimants  
Chester R. Arcement, Jr.  
Catherine C. Arcement

Case Number: 03-00433

Name of the Respondent  
Merrill Lynch Pierce Fenner & Smith

Hearing Site: New Orleans, LA

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Chester R. Arcement, Jr. and Catherine C. Arcement, hereinafter referred to as "Claimants": L. Jerome Stanley, L. Jerome Stanley, P.C., Baton Rouge, Louisiana.

For Merrill Lynch Pierce Fenner & Smith (MLPFS"), hereinafter referred to as "Respondent": Mark J. Fernandez, Barrasso Usdin Kupperman Freeman & Sarver, LLC, New Orleans, Louisiana.

**CASE INFORMATION**

Statement of Claim filed on or about: January 9, 2003.

Claimants signed the Uniform Submission Agreement: November 11, 2002.

Statement of Answer filed by Respondent on or about: May 6, 2003.

Respondent did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) violation of the Louisiana Securities Act; 2) breach of fiduciary duty; 3) breach of contract; and 4) unsuitability. The causes of action relate to the purchase and sale of securities, including purchases and sales made on margin, in Oracle, Cisco Systems, Corning, Ericsson ADR, Enron, Texas Instruments and Sun Microsystems and other unspecified securities.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages of \$413,763.17, plus margin interest of \$58,134.71, estimated additional asset management fees of \$4,500.00, interest, punitive damages of \$400,000.00, attorney's fees and the costs of this proceeding.

Respondent requested that the Statement of Claim be denied, that all fees and costs be assessed against the claimants and that Respondent be awarded such other and further relief as is deemed just and proper.

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

Respondent did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the undersigned arbitrators (the "Panel") on all issues submitted.

At the final hearing for this matter, Claimants presented a Motion to Quash a subpoena that had been issued by the Respondent. The Panel granted this motion.

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 found liable for breach of fiduciary duty and shall pay to Claimants compensatory damages in the amount of \$61,000.00, interest specifically excluded.

Respondent is liable and shall pay to Claimants the sum of \$375.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive damages, attorney's fees and any request for relief pursuant to violation of the Louisiana Securities Act, are denied.

### **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	= \$ 375.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, MLPFS is a member firm and is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

### **Adjournment Fees**

No adjournments were granted during these proceedings for which fees were assessed.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during these proceedings.

### **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 a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: May 3, 2004	1 session
One (1) Pre-hearing session with the Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: September 12, 2003	1 session
Eight (8) Hearing sessions @ \$1,200.00	= \$ 9,600.00
Hearing Dates: June 8, 2004	2 sessions
June 9, 2004	3 sessions
June 10, 2004	3 sessions
Total Forum Fees	= \$11,250.00

The Panel has assessed the total forum fees of \$11,250.00 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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative fees were incurred during these proceedings.

### Fee Summary

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 375.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
<u>Forum Fees</u>	= \$11,250.00
<u>Total Fees</u>	= \$18,250.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$11,250.00

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

### ARBITRATION PANEL

<i>Larry A. Feldman</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>James Francis Donovan</i>	-	<i>Public Arbitrator</i>
<i>Charles E. Melancon, Jr.</i>	-	<i>Non-Public Arbitrator</i>

### Concurring Arbitrators' Signatures

\_\_\_\_\_/s/  
Larry A. Feldman  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
06/18/04  
Signature Date

/s/  
James Francis Donovan  
Public Arbitrator

06/22/04  
Signature Date

/s/  
Charles E. Melancon, Jr.  
Non-Public Arbitrator

06/21/04  
Signature Date

06/22/04  
Date of Service (For NASD Dispute Resolution office use only)

Arbitration No. 05-00433

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Larry A. Feldman  
Public Arbitrator, Presiding Chairperson

6-18-04

Signature Date

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

James Francis Donovan  
Public Arbitrator

Signature Date



Charles E. Melancon, Jr.  
Non-Public Arbitrator

June 21, 2004  
Signature Date

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