

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

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In the Matter of the Arbitration Between:

Name of the Claimants

Richard Carrillo,  
Maria D. Carrillo, and  
Maria D. Carrillo IRRA

Case Number: 03-00479

Name of the Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.  
Rittenhouse Financial Services, Inc.,  
a/k/a Rittenhouse Asset Management, Inc.,  
David Alvarez, Fred Eric Hirsch, Amy Fetkovich  
and Laurel Capital Advisors

Hearing Site: Albuquerque, New Mexico

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**NATURE OF DISPUTE**

Customers vs. Member Firm, Non-Member Firms and Associated Persons

**REPRESENTATION OF PARTIES**

Herbert Ehrlich, Esq. of the law firm Scherr Legate & Ehrlich, PLLC, located in El Paso, Texas, represented Claimants, Richard Carrillo, Maria D. Carrillo, Maria D. Carrillo IRA, hereinafter referred to as "Claimants."

Joseph L. Hood, Esq. of the law firm Scott, Hulse, Marshall, Feuille, Finger & Thurmond, P.C., located in El Paso, Texas, represented Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"), David Alvarez ("Alvarez") and Fred Eric Hirsch ("Hirsch"), hereinafter collectively referred to as "Respondents."

Respondents Rittenhouse Financial Services, Inc., a/k/a Rittenhouse Asset Management, Inc., Amy Fetkovich, and Laurel Capital Advisors did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about January 21, 2003. Claimants, Richard and Maria Carrillo, jointly signed the Uniform Submission Agreement on or about January 21, 2003.

Statement of Answer filed by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., David Alvarez and Fred Eric Hirsch on June 18, 2003. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., signed the Uniform Submission Agreement on June 10, 2003. Respondents, David Alvarez and Fred Eric Hirsch, jointly signed the Uniform Submission Agreement on June 18, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, negligence, and fraud. The causes of action relate to investments made in Merrill Lynch Consults and IRRA accounts.

Unless specifically admitted in their Answer, Respondents Merrill Lynch, Alvarez, and Hirsh denied the allegations made in the Statement of Claim.

**RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$ 79,836.17
Punitive Damages	unspecified
Interest	at the legal rate
Attorneys' Fees	reasonable attorney's fees
Other Costs	as the panel deems appropriate

Respondents Merrill Lynch, Alvarez, and Hirsh requested:

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	denial and dismissal of claims as well as expungement of Alvarez and Hirsh's CRD records

**OTHER ISSUES CONSIDERED AND DECIDED**

At hearing the panel dismissed Richard and Maria Carrillo's claims against Respondent Rittenhouse Financial Services, Inc., a/k/a Rittenhouse Asset Management, Inc., because it is not an NASD member firm and did not voluntarily submit to NASD arbitration.

Upon review of the file, the undersigned arbitrators (the "Panel") determined that Respondent Amy Fetkovich and Laurel Capital Advisors were not properly served with the Statement of Claim and did not receive due notice of the hearing. At hearing, the panel dismissed Richard and Maria Carrillo's claims without prejudice against Amy Fetkovich and Laurel Capital Advisors.

### **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:

1. Any and all claims asserted by Richard and Maria Carrillo against Merrill Lynch Pierce Fenner and Smith, David Alvarez, and Fred E. Hirsh are denied.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents David Alvarez and Fred E. Hirsh's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent David Alvarez and Fred E. Hirsh must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Except as specified herein, parties shall bear their own costs, including attorney's fees.
4. Any and all claims not addressed specified specifically herein 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	= \$ 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 persons at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch Pierce Fenner & Smith is assessed:

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

**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 @ \$750.00 = \$ 750.00

Pre-hearing conference: February 9, 2004 1 session

Four (4) Hearing sessions @ \$ 750.00 = \$3,000.00

Hearing Dates: June 23, 2004 2 sessions

June 24, 2004 2 sessions

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Total Forum Fees = \$3,750.00

1. The Panel has assessed 50% of the total forum fees in the amount of \$1,875.00 jointly to Claimants, Richard and Maria Carrillo.
2. The Panel has assessed 50% of the total forum fees in the amount of \$1,875.00 solely to Respondent, Merrill Lynch Pierce Fenner & Smith, Inc.

**FEE SUMMARY**

1. Claimants Richard Carrillo, Maria D. Carrillo, and Maria D. Carrillo, IRRA are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$1,875.00
Total Fees	= \$2,100.00
Less payments	= \$1,450.00
Balance Due NASD Dispute Resolution	= \$ 650.00

2. Respondent Merrill Lynch Pierce Fenner & Smith is solely liable for:

Member Fees	= \$3,550.00
Forum Fees	= \$1,875.00
Total Fees	= \$5,425.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$1,875.00

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

**ARBITRATION PANEL**

Peter J. Broullire, III, Esq.	-	Public Arbitrator, Presiding Chairperson
Jean F. Gibson	-	Public Arbitrator
Jack D. Ladd, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Peter J. Broullire, III, Esq.  
Public Arbitrator, Presiding Chairperson

7/07/04  
Signature Date

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Jean F. Gibson  
Public Arbitrator

07/07/04  
Signature Date

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Jack D. Ladd, Esq.  
Non-Public Arbitrator

07/07/04  
Signature Date

07/07/04  
Date of Service (For NASD Dispute Resolution office use only)

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Jean F. Gibson

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- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

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