

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Sheri Ann Garay, and Sheri Garay Custodian for Marisa Garay, Sheri Garay Custodian for Alana Garay, Sheri Gary IRA, Site for Sore Eyes Profit Sharing Plan U/A 01/01/1999, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Peter Christopher Karp, Respondents

Case Number: 03-01786

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

James Jay Seltzer, Esq.
The Law Offices of James Jay Seltzer
Emeryville, California

For Respondents:

Eric J. Glassman, Esq.
Mennemeier, Glassman & Stroud LLP
Sacramento, California

CASE INFORMATION

Statement of Claim filed: March 7, 2003

Claimants' Joint Uniform Submission Agreement signed: February 20, 2003

Joint Statement of Answer filed by Respondents: June 6, 2003

CASE SUMMARY

Claimants alleged breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentations/non-disclosures, omission of facts, and unsuitability in connection with the purchase and management of common stock in various companies, including, but not limited to, Exodus Communications, Inc., XO Communications, Inc., Network Appliance, Inc., PMC Sierra, Inc., and JDS Uniphase Corp.

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

RELIEF REQUESTED

Claimants requested actual damages of \$170,000.00, punitive damages of \$ 510,000.00, prejudgment interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, expungement of all reference to the Claim from Respondents' CRD records, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Peter Christopher Karp did not file with the NASD Dispute Resolution, properly executed submission agreements; however, all said Respondents are required to submit to arbitration and, having answered the claim and appeared at the pre-hearing conference, all said Respondents are bound by the determination of the Panel on all issues submitted.

On July 10, 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 waiver 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.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

STIPULATION

Through their respective counsel of record, the parties stipulate to, and seek the Panel's approval of, the following order:

1. The arbitration denominated Sheri Ann Garay et.al. vs. Merrill Lynch Pierce, Fenner & Smith Incorporated and Peter Karp, Case No. 03-01786, is hereby dismissed in its entirety with prejudice.
2. The Panel recommends and directs that all references to the complaints of the Claimant or the claim filed by her be expunged from the record of Respondent Peter Karp maintained by the NASD in its Central Registration Depository (CRD), with the understanding that, pursuant to NASD Notice to Members 99-09, NASD Regulation will not execute the expungement directive until the Arbitration Award is confirmed by a court of competent jurisdiction.
3. All other relief not expressly granted is denied.
4. Merrill Lynch shall bear any additional forum costs or forum fees charged by the NASD in connection with any proceedings that occur in connection with this Stipulation or otherwise occur in connection with Merrill Lynch's effort to obtain expungement of this matter from Karp's CRD records.

AWARD

After considering the pleadings and the parties' request for this stipulated award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants and Respondents have entered into a confidential settlement agreement.
2. Claimants' claims are dismissed in their entirety with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Peter Christopher Karp's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Peter Christopher Karp must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
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	= \$ 375.00
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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 which 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	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

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/Panel. The following fees are assessed:

1 Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: November 10, 2003	1 session

Total Forum Fees	= \$ 1,200.00
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1. The Panel assessed \$ 600.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$ 600.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$ 975.00
<u>Less payments</u>	= \$ (1,575.00)
Refund Due Claimants	= \$ (600.00)

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

Member Fees	= \$ 7,000.00
<u>Less payments</u>	= \$ (7,000.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. and Peter Christopher Karp are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 600.00
<u>Less payments</u>	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 600.00

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

James D. Hadfield, Esq.	-	Public Arbitrator, Presiding Chair
Marc Patrick Bouret, J.D.	-	Public Arbitrator
Thomas A. Thornhill, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures:

James D. Hadfield, Esq.
Chair, Public Arbitrator

Signature Date

Marc Patrick Bouret, J.D.
Public Arbitrator

Signature Date

Thomas A. Thornhill, Jr.
Non-Public Arbitrator

Signature Date

Date of Service

ARBITRATION PANEL

James D. Hadfield, Esq.

-

Public Arbitrator, Presiding Chair

Marc Patrick Bouret, J.D.

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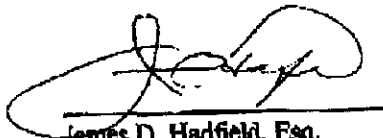
Public Arbitrator

Thomas A. Thornhill, Jr.

-

Non-Public Arbitrator

Concurring Arbitrators' Signatures:



James D. Hadfield, Esq.
Chair, Public Arbitrator

August 2, 2004
Signature Date

Marc Patrick Bouret, J.D.
Public Arbitrator

Signature Date

Thomas A. Thornhill, Jr.
Non-Public Arbitrator

Signature Date

8/4/04
Date of Service

ARBITRATION PANEL

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Marc Patrick Bouret, J.D.	-	Public Arbitrator
Thomas A. Thornhill, Jr.	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures:

James D. Hadfield, Esq.
Chair, Public Arbitrator

Signature Date

Marc Patrick Bouret, J.D.
Public Arbitrator

Signature Date


Thomas A. Thornhill, Jr.
Non-Public Arbitrator

8-2-04
Signature Date

8/4/04
Date of Service

ARBITRATION PANEL

James D. Hadfield, Esq.	-	Public Arbitrator, Presiding Chair
Marc Patrick Bouret, J.D.	-	Public Arbitrator
Thomas A. Thornhill, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures:

James D. Hadfield, Esq.
Chair, Public Arbitrator

Signature Date

Marc Patrick Bouret J.D.
Marc Patrick Bouret, J.D.
Public Arbitrator

August 4, 2004
Signature Date

Thomas A. Thornhill, Jr.
Non-Public Arbitrator

Signature Date

8/4/04
Date of Service