

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

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In the Matter of the Arbitration Between:

William A. Walrod Revocable Trust and Ruth B. Walrod Revocable Trust (Claimants) v. Merrill Lynch Pierce, Fenner, & Smith Inc., Donato J. Eassey, Daniel K. Hocking, and Merrill Lynch & Co., Inc. (Respondents)

Case Number: 03-03773

Hearing Site: Buffalo, New York

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Nature of the Dispute: Customers vs. Member, Non-Member and Associated Persons

**REPRESENTATION OF PARTIES**

Claimants William A. Walrod Revocable Trust ("W. Walrod Trust") and Ruth B. Walrod Revocable Trust ("R. Walrod Trust") hereinafter collectively referred to as "Claimants": Mary Speedy Hajdu, Esq. and Dalton Burgett, Esq., Burgett & Robbins, Jameston, NY.

Respondents Merrill Lynch Pierce Fenner & Smith ("Merrill"), Donato J. Eassey ("Eassey"), Daniel K. Hocking ("Hocking"), and Merrill Lynch & Co., Inc. ("Merrill Lynch & Co.") hereinafter collectively referred to as "Respondents": George Shieren, Esq., Clifford Chance, LLP, New York, NY and Carol E. Heckman, Esq., Harter, Secrest & Emery, Buffalo, NY.

Respondent Daniel K. Hocking ("Hocking"): Ronald C. Minkoff, Esq., Frankfurt, Kurnit, Klein & Selz PC, New York, NY. Previously represented by George Shieren, Esq., Clifford Chance, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: May 21, 2003.

Amended Statement of Claim filed on or about: January 14, 2005.

Claimants signed the Uniform Submission Agreement: June 3, 2003.

Joint Statement of Answer filed by Respondents Merrill, Eassey and Hocking on or about: August 18, 2003.

Respondent Merrill signed the Uniform Submission Agreement: August 18, 2003.

Respondent Eassey signed the Uniform Submission Agreement: July 21, 2003.

Respondent Hocking signed the Uniform Submission Agreement: August 14, 2003.

Respondent Merrill Lynch & Co. did not file a Statement of Answer or sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, negligence, breach of contract, fraud, misrepresentation, omission of facts, manipulation, and civil RICO liability. The causes of action relate to Enron.

Unless specifically admitted in their Answer, Respondents Merrill, Eassey and Hocking denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$25,171,200.00; punitive, treble and exemplary damages in the amount of \$75,513,600.00; costs and disbursements of this action.

Respondents Merrill, Eassey and Hocking request that the Panel dismiss the Statement of Claim in its entirety and assess all costs and forum fees against Claimants and their counsel, together with any other further relief that the Panel deems just and proper.

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

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondent Merrill Lynch & Co., has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Merrill Lynch & Co. did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Pursuant to the Stipulation of Discontinuance signed by counsel to all parties, all Respondents, including Merrill Lynch & Co. are subject to arbitration.

In accordance with the Order issued by Chairperson Sellers on behalf of the Panel following the pre-hearing conference of April 13, 2004, Respondent Merrill Lynch & Co. is subject to arbitration.

The parties have submitted a Joint Stipulation of Dismissal with prejudice and Request for Expungement.

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

Arbitrator Andrea M. Benson, Esq. withdrew as a member of the Panel in this matter. Since the parties settled prior to the appointment of a replacement arbitrator, only two arbitrators remain.

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimants' claims are dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Donato J. Eassey'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 Donato J. Eassey must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Daniel K. Hocking'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 Daniel K. Hocking must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
4. Any and all relief not specifically addressed herein, including punitive, treble, and exemplary damages is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 600.00
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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. In this matter, the member firm Merrill is a party.

Member Surcharge	= \$ 3,750.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,500.00</u>
Total Member Fees	= \$ 10,000.00

### **Adjournment Fees**

The following adjournment fees are assessed:

December 6 –10, 2004 and April 25-29, 2005 adjournment requested by Claimants = Waived  
April 25 - 29, 2005 adjournment requested by Claimants and Respondents = Waived

### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$ 900.00

Pre-hearing conference:	June 9, 2004	1 session
	September 8, 2004	1 session

Three (3) Pre-hearing conference session(s) with the Panel @ \$1,200.00/session = \$ 3,600.00

Pre-hearing conference:	December 19, 2003	1 session
	February 2, 2004	1 session
	April 13, 2004	1 session

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Total Forum Fees	= \$ 4,500.00
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1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimant W. Walrod Trust has been assessed \$ 750.00 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Claimant R. Walrod Trust has been assessed \$ 750.00 of the forum fees
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Merrill has been assessed \$ 750.00 of the forum fees.
4. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Eassey has been assessed \$ 750.00 of the forum fees.
5. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Hocking has been assessed \$ 750.00 of the forum fees.

6. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure Respondent Merrill Lynch & Co., has been assessed \$ 750.00 of the forum fees.

**Fee Summary**

1. Claimant W. Walrod Trust is solely liable for:

Forum Fees	= \$ 750.00
Total Fees	= \$ 750.00
<u>Less payments</u>	= \$ 750.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Claimant R. Walrod Trust is solely liable for:

Forum Fees	= \$ 750.00
Total Fees	= \$ 750.00
<u>Less payments</u>	= \$ 450.00
Balance Due NASD Dispute Resolution	= \$ 300.00

3. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
Total Fees	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondent Merrill is solely liable for:

Member Fees	= \$ 10,000.00
<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$ 10,750.00
<u>Less payments</u>	= \$ 10,000.00
Balance Due NASD Dispute Resolution	= \$ 750.00

5. Respondent Eassey is solely liable for:

<u>Forum Fee</u>	= \$ 750.00
Total Fees	= \$ 750.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

6. Respondent Hocking is solely liable for:

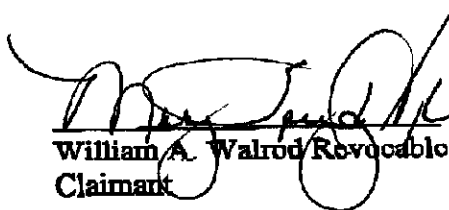
<u>Forum Fee</u>	= \$ 750.00
Total Fees	= \$ 750.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 750.00

7. Respondent Merrill Lynch & Co. is solely liable for:

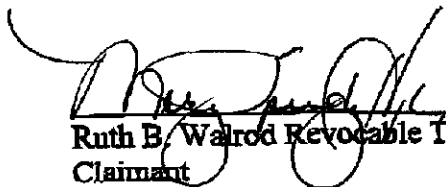
<u>Forum Fee</u>	= \$	<u>750.00</u>
Total Fees	= \$	750.00
<u>Less payments</u>	= \$	<u>0.00</u>
Balance Due NASD Dispute Resolution	= \$	750.00

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**

  
\_\_\_\_\_  
William A. Walrod Revocable Trust  
Claimant

June 7, 2005  
\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Ruth B. Walrod Revocable Trust  
Claimant

June 7, 2005  
\_\_\_\_\_  
Signature Date

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Merrill Lynch Pierce Fenner & Smith, Inc.  
Respondent

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

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Donato J. Eassey  
Respondent

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

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Daniel K. Hocking  
Respondent

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

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Merrill Lynch & Co.  
Respondent

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


Parties' Signatures

\_\_\_\_\_  
William A. Walrod Revocable Trust  
Claimant

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

\_\_\_\_\_  
Ruth B. Walrod Revocable Trust  
Claimant

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

By:   
Merrill Lynch, Pierce, Fenner & Smith, Incorporated  
Respondent


6/17/05  
\_\_\_\_\_  
Signature Date

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Donato J. Eassey  
Respondent

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

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Daniel K. Hocking  
Respondent

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

By:   
Merrill Lynch & Co., Inc.  
Respondent

6/17/05  
\_\_\_\_\_  
Signature Date



Parties' Signatures

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William A. Walrod Revocable Trust  
Claimant

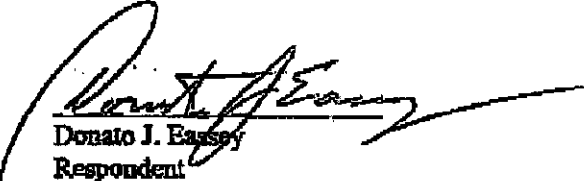
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Ruth B. Walrod Revocable Trust  
Claimant

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Signature Date

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Merrill Lynch, Pierce, Fenner & Smith, Incorporated  
Respondent

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Signature Date

  
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Donato J. Eassey  
Respondent

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7-1-05  
Signature Date

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Daniel K. Hocking  
Respondent

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Signature Date

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Merrill Lynch & Co., Inc.  
Respondent

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Signature Date

Parties' Signatures

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William A. Walrod Revocable Trust  
Claimant

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Signature Date

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Ruth B. Walrod Revocable Trust  
Claimant

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Signature Date

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Merrill Lynch Pierce Fenner & Smith, Inc.  
Respondent

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Signature Date

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Donato J. Bassey  
Respondent

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Signature Date

  
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Daniel K. Hocking  
Respondent

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6/8/05  
Signature Date

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Merrill Lynch & Co.  
Respondent

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

ARBITRATION PANEL

Jeffrey Sellers  
Cheryl Nichols

- Non-Public Arbitrator, Presiding Chair  
- Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

  
Jeffrey Sellers  
Non-Public Arbitrator, Presiding Chair

8/4/05  
Signature Date

\_\_\_\_\_  
Cheryl Nichols  
Public Arbitrator

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

August 16, 2005  
Date of Service (For NASD office use only)

ARBITRATION PANEL

Jeffrey Sellers  
Cheryl Nichols


- Non-Public Arbitrator, Presiding Chair  
- Public Arbitrator

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Non-Public Arbitrator, Presiding Chair

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Signature Date

  
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Cheryl Nichols  
Public Arbitrator

8/8/05  
Signature Date

August 16, 2005  
Date of Service (For NASD office use only)