

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Larry Lenhart and Kim Karloff, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Inc. and Roy Arcadio Manriquez, Respondents

Case Number: 03-03828

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

Mitchell S. Ostwald, Esq.
The Law Offices of Mitchell S. Ostwald
Sacramento, California

For Respondents:

Paul J. Schumacher, Esq.
Bingham McCutchen LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: May 27, 2003

Claimant Larry Lenhart's Uniform Submission Agreement signed: May 20, 2003

Claimant Kim Karloff's Uniform Submission Agreement signed: May 22, 2003

Respondents' Joint Statement of Answer filed: August 11, 2003

Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.'s Uniform Submission Agreement signed:
July 2, 2003

Respondent Roy Arcadio Manriquez's Uniform Submission Agreement signed: July 31, 2003

CASE SUMMARY

Claimants alleged breach of fiduciary duty, fraud, failure to supervise, and violations of federal and state securities laws, NASD Rules of Fair Practice, and NYSE Rules. Claimants' allegations involved stocks including, but not limited to, Qwest, America Online, Clarus, Cisco, Internet Capital Group, Infospace, I2 Technology, Juniper, Motorola, and Sun Microsystems.

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

RELIEF REQUESTED

Claimants requested \$727,000.00 in compensatory damages, disgorgement, restitution, lost-opportunity, pre- and post judgment interest at the legal rate, unspecified punitive damages, and costs including attorneys' fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and expungement of all references to this action from the CRD records of Respondents.

OTHER ISSUES CONSIDERED AND DECIDED

On June 17, 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 waivers 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.

On December 23, 2004, Claimants dismissed their claims with prejudice. Claimants' dismissal was not the result of any settlement agreement reached with the Respondents.

On December 23, 2004, after Claimants dismissed their claims with prejudice, Respondents requested that the case remain open and that the panel decide the request for expungement. Respondents requested expungement in their Answer to the Statement of Claim.

On January 21, 2005, Respondents filed a Motion for Expungement of all reference to this matter from Respondent Roy Arcadio Manriquez's registration records maintained by the NASD Central Registration Depository ("CRD"). Claimants did not oppose the merits of this motion. On February 22, 2005, a pre-hearing conference was held, attended by the Respondents and the Panel. After due deliberation in executive session, the Panel decided to grant the motion.

AWARD

After considering the pleadings and evidence presented by the Parties, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Roy Arcadio Manriquez's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Roy Arcadio Manriquez must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
2. The parties shall bear their respective costs, including attorney's fees.
3. 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

Adjournment Fees

The following adjournment fees are assessed:

Hearing Dates, June 21-24, 2004, adjournment requested by Claimants	= waived
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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:

2 Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session	= \$ 900.00
Pre-hearing conferences: February 24, 2004	1 session
March 9, 2004	1 session
3 Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 3,600.00
Pre-hearing conferences: October 28, 2003	1 session
June 9, 2004	1 session
February 22, 2005	1 session

Total Forum Fees	= \$ 4,500.00
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1. The Panel assessed \$1,650.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$2,850.00 of the forum fees jointly and severally to Respondents. (Please note that the forum fee for the February 22, 2005, pre-hearing conference call was assessed to Respondents.)

Fee Summary

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

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 1,650.00
Total Fees	= \$ 2,025.00
Less payments	= \$(1,575.00)
Balance Due NASD Dispute Resolution	= \$ 450.00

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

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

3. Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. and Roy Arcadio Manriquez are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 2,850.00
Less payments	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 2,850.00

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

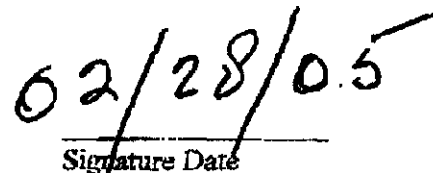
Cheryl R. Kershner	-	Public Arbitrator, Presiding Chair
Lee A. Wolterding	-	Public Arbitrator
Mary H. Evans, J.D.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Cheryl R. Kershner
Chair, Public Arbitrator

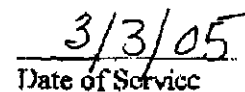
Signature Date


Lee A. Wolterding
Public Arbitrator


Signature Date

Mary H. Evans
Non-Public Arbitrator

Signature Date


Date of Service

ARBITRATION PANEL

Cheryl R. Kershner	-	Public Arbitrator, Presiding Chair
Lee A. Wolterding	-	Public Arbitrator
Mary H. Evans, J.D.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Cheryl R. Kershner
Chair, Public Arbitrator

Signature Date

Lee A. Wolterding
Public Arbitrator

Signature Date



Mary H. Evans
Non-Public Arbitrator

 2/28/05

Signature Date

3/3/05

Date of Service

ARBITRATION PANEL

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Lee A. Wolkarding	-	Public Arbitrator
Mary H. Evans, J.D.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


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Chair, Public Arbitrator

3/3/05
Signature Date

Lee A. Wolkarding
Public Arbitrator

Signature Date

Mary H. Evans
Non-Public Arbitrator

Signature Date

3/4/05
Date of Service