

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

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In the Matter of the Arbitration Between:

Gregory Eansor, Victoria Eansor, and The Eansor Living Trust dtd 2/17/00, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Inc. and Kevin S. Calderon, Respondents

Case Number: 03-03829

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

Mitchell J. Albert, Esq.  
Timothy N. Will, Esq.  
Albert & Will LLP  
Torrance, California

For Respondents:

Robert B. Ericson, Esq.  
Bingham McCutchen  
Los Angeles, California

**CASE INFORMATION**

*Statement of Claim filed:* May 27, 2003

*Claimants' Joint Uniform Submission Agreement signed:* May 22, 2003

*Joint Statement of Answer filed by Respondents:* August 22, 2003

*Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.'s Uniform Submission Agreement signed:* August 22, 2003

*Respondent Kevin S. Calderon's Uniform Submission Agreement signed:* August 26, 2003

**CASE SUMMARY**

Claimants alleged unsuitability, breach of fiduciary duty, fraud, negligent misrepresentation, negligence, negligent supervision, and violation of securities laws, involving securities in Commerce One and Ariba.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

### **RELIEF REQUESTED**

Claimants requested \$4,000,000.00 in compensatory damages, unspecified punitive damages, prejudgment interest at the rate of 10% per annum from 2000 through the date of payment of the Award, disgorgement of all fees and costs, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and costs. Respondent Kevin S. Calderon requested expungement of this matter from his CRD record.

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

On June 9, 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.

### **AWARD**

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

- 1) Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. and Kevin S. Calderon are jointly and severally liable to and shall pay Claimants the sum of \$250,000.00 in compensatory damages.
- 2) Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. and Kevin S. Calderon are jointly and severally liable to and shall pay Claimants interest at the rate of 10% per annum on \$250,000.00 from November 15, 2000 until the date that payment of this Award is made in full.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 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	= \$ 600.00
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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 that 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	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 8,550.00</b>

#### **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 Panel. The following fees are assessed:

3 Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 3,600.00
Pre-hearing conferences:	
November 21, 2003	1 session
July 21, 2004	1 session
August 5, 2004	1 session

16 Hearing sessions @ \$1,200.00/session	= \$19,200.00
Hearings:	
August 30, 2004	2 sessions
August 31, 2004	2 sessions
September 1, 2004	2 sessions
September 2, 2004	2 sessions
September 3, 2004	2 sessions
September 22, 2004	2 sessions
September 23, 2004	2 sessions
September 24, 2004	2 sessions

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<b>Total Forum Fees</b>	<b>= \$22,800.00</b>
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The Panel assessed \$ 22,800.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants requested 12 audiotapes @ \$15.00 each:	= \$ 180.00
Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. requested 5 audiotapes @ \$15.00 each:	= \$ 75.00
Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. requested 10 photocopies @ \$0.50 each	= \$ 5.00

**Fee Summary**

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

Initial Filing Fee	= \$ 600.00
Administrative Costs	= \$ 180.00
Total Fees	= \$ 780.00
Less payments	= \$(1,995.00)
<b>Refund Due Claimants</b>	<b>= \$(1,215.00)</b>

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

Member Fees	= \$ 8,550.00
Administrative Costs	= \$ 80.00
Forum Fees	= \$22,800.00
Total Fees	= \$31,430.00
Less payments	= \$( 8,625.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$22,805.00</b>

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**

Daniel David Kopman, Esq.	-	Public Arbitrator, Presiding Chair
Michael Leymon Coffey, MPH	-	Public Arbitrator
Kenneth L. Rosenblum	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Daniel David Kopman, Esq.  
Chair, Public Arbitrator

9/29/04  
Signature Date

Michael Leymon Coffey, MPH  
Public Arbitrator

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

Kenneth L. Rosenblum  
Non-Public Arbitrator

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

9/29/04  
Date of Service

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Chair, Public Arbitrator

Signature Date



Michael Leymon Coffey, MPH  
Public Arbitrator

29 Sep 2004

Signature Date

Kenneth I. Rosenblum  
Non-Public Arbitrator

Signature Date

9/30/04

Date of Service