

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

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In the Matter of the Arbitration Between:

Matthew Jimenez and Simone Jimenez, individually and as Trustees of Jimenez Revocable Trust U/A/D 12/23/96 and M&S Revocable Trust, U/A/D 12/23/96, Claimants v. Jeffrey S. Hanson, Uwe M. Rutke, and Merrill Lynch, Pierce, Fenner & Smith Incorporated, Respondents

Case Number: 04-00632

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

James J. Seltzer, Esq.  
Law Offices of James J. Seltzer  
Emeryville, California

For Respondents:

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

**CASE INFORMATION**

Statement of Claim filed: January 30, 2004

Claimants' Joint Uniform Submission Agreement signed: January 27, 2004

Joint Statement of Answer filed by Respondents: April 13, 2004

Respondent Jeffrey S. Hanson's Uniform Submission Agreement signed: April 5, 2004

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission Agreement signed: March 1, 2004

### **CASE SUMMARY**

Claimants alleged breach of contract, negligence, failure to supervise, elder abuse, unsuitability, misrepresentations and non-disclosures, omission of facts, unauthorized trading, and breach of fiduciary duty. Claimants' allegations involved various unspecified securities.

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

### **RELIEF REQUESTED**

Claimants requested unspecified compensatory damages, punitive damages, treble damages, and costs, including attorney's fees.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety, expungement of all references to this matter from Respondents Jeffrey S. Hanson's and Uwe M. Ruttke's regulatory records, and costs.

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

Respondent Uwe M. Ruttke did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and having answered the claim is bound by the determination of the Panel on all issues submitted.

On February 13, 2004, 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.

On May 7, 2004, Claimants dismissed Respondent Uwe M. Ruttke, with prejudice, from this matter.

On February 8, 2006, Claimants advised NASD that the remaining parties reached a settlement in this matter and that the parties would be submitting a request for a Stipulated Award.

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On March 17, 2006, the parties submitted a stipulated request for an award dismissing all claims with prejudice and recommending expungement of all references to this matter from Respondents Jeffrey Hanson's and Uwe M. Ruttke's registration records maintained by the NASD Central Registration Depository. The parties' stipulation set forth various facts supporting the parties' request. After considering the parties' stipulation, the Panel grants the parties' request with the issuance of this Stipulated Award.

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 parties' stipulation, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are dismissed with prejudice upon Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated fulfilling its obligations pursuant to the parties' confidential Settlement Agreement.
- 2) The Panel recommends the expungement of all references to the above-captioned arbitration from Respondents Jeffrey Hanson's and Uwe M. Ruttke'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, Respondents Jeffrey Hanson and Uwe M. Ruttke must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 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	= \$ 250.00
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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 Incorporated is a party ("Merrill Lynch") and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,200.00
<b>Total Member Fees</b>	<b>= \$ 4,450.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

Adjournment of the April 25-29, 2005 hearings requested by Respondents Merrill Lynch and Jeffrey S. Hanson	= \$1,000.00
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The Panel assessed the adjournment fee jointly and severally to Claimants.

#### **Forum Fees and Assessments**

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion decided on the papers. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,000.00/session	= \$2,000.00
Pre-hearing conferences: August 16, 2004 1 session	
March 14, 2005 1 session	

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<b>Total Forum Fees</b>	<b>= \$2,000.00</b>
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1. The Panel assessed \$1,000.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$1,000.00 of the forum fees jointly and severally to Respondents Merrill Lynch and Jeffrey S. Hanson.

**Fee Summary**

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

Initial Filing Fee	= \$ 250.00
Adjournment Fee	= \$ 1,000.00
<u>Forum Fees</u>	<u>= \$ 1,000.00</u>
Total Fees	= \$ 2,250.00
Less payments by Claimants	= \$(1,250.00)
<u>Less payments by Respondent Merrill Lynch</u>	<u>= \$(1,000.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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

Member Fees	= \$ 4,450.00
<u>Less payments</u>	<u>= \$(4,450.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents Merrill Lynch and Jeffrey S. Hanson are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,000.00
<u>Less payments</u>	<u>= \$ (0.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,000.00</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**

Peter Kassel	-	Public Arbitrator, Presiding Chair
Terry Lloyd	-	Public Arbitrator
Mary Curran	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Peter Kassel  
Chair, Public Arbitrator

APRIL 7, 06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Terry Lloyd  
Public Arbitrator

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

\_\_\_\_\_  
Mary Curran  
Non-Public Arbitrator

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

4/6/06  
\_\_\_\_\_  
Date of Service


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Terry Lloyd	-	Public Arbitrator
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**Concurring Arbitrators' Signatures**

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Peter Kassel  
Chair, Public Arbitrator

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Signature Date

  
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Terry Lloyd  
Public Arbitrator

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Signature Date

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Mary Curran  
Non-Public Arbitrator

\_\_\_\_\_  
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4/6/06  
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Date of Service