

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

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In the Matter of the Arbitration Between:

Nick Korneff and Nadia Korneff, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Inc. and Susan L. Evans, Respondents

Case Number: 04-00729

Hearing Site: Los Angeles, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

Timothy A. Canning, Esq.  
Attorney At Law  
Novato, California

For Respondents:

Kenneth C. Mennemeier, Esq.  
Mennemeier, Glassman & Stroud LLP  
Sacramento, California

**CASE INFORMATION**

Statement of Claim filed: February 2, 2004

Claimants' Joint Uniform Submission Agreement signed: December 23, 2003

Joint Statement of Answer filed by Respondents: May 25, 2004

Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.'s Uniform Submission Agreement signed: March 17, 2004

Respondent Susan L. Evans's Uniform Submission Agreement signed: April 23, 2004

**CASE SUMMARY**

Claimants alleged fraud, negligence, breach of contract, breach of fiduciary duty, misrepresentation, unsuitability, and failure to supervise, involving stock in Republic Industries.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted a number of affirmative defenses, including waiver, estoppel, laches, comparative and contributory negligence, lack of proximate cause, and failure to mitigate damages.

### **RELIEF REQUESTED**

Claimants requested \$1,300,000.00 in compensatory damages, unspecified punitive damages, and costs, including filing fees and hearing session fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, expungement of any reference to this matter from Respondent Susan L. Evans' CRD record, and forum fees to be assessed against Claimants.

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

On June 28, 2004 and July 16, 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 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.

The parties have submitted a Stipulation that asks the Panel to enter a Stipulated Award that provides in pertinent part:

1. Each and every one of Claimants' claims against Respondents is dismissed with prejudice;
2. The Panel recommends and directs that all references to the Claimants' claims and allegations be expunged from the records of Respondent Susan L. Evans maintained by NASD in its Central Registration Depository, with the understanding that, pursuant to NASD Notice to Members 99-09, NASD 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; and
4. Merrill Lynch, Pierce, Fenner & Smith Inc. shall bear any forum fees that are unpaid as of this date for all arbitration proceedings in this matter, as well as any fees assessed by NASD in connection with any proceedings that occur in connection with the parties' Stipulation or in connection with Merrill Lynch, Pierce, Fenner & Smith Inc.'s effort to obtain expungement of this matter from Susan L. Evans' CRD records.

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 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. Each and every one of Claimants' claims against Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. and Susan L. Evans is hereby dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Susan L. Evans' 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 Susan L. Evans must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Any and all relief not specifically addressed herein 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	= \$ 500.00
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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	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00
<b>Total Member Fees</b>	<b>= \$ 8,550.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

April 12-15, 2005 hearing adjournment requested by parties	= \$ 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 18, 2005 1 session  
March 11, 2005 1 session

1 Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200.00  
Pre-hearing conference: September 21, 2004 1 session

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**Total Forum Fees = \$ 2,100.00**

1. The Panel assessed \$1,050.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$1,050.00 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	= \$ 500.00
Forum Fees	= \$ 1,050.00
Total Fees	= \$ 1,550.00
Less payments	= \$(1,700.00)
<b>Refund Due Claimants</b>	<b>= \$( 150.00)</b>

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

Member Fees	= \$ 8,550.00
Less payments	= \$(8,550.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

3. Respondents are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,050.00
Less payments	= \$ 0.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,050.00</b>

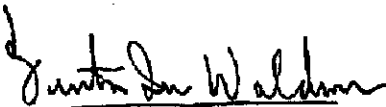
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Newton Ira Waldman  
Dennis A. Torres  
Michael G. Clark

- Public Arbitrator, Presiding Chair  
- Public Arbitrator  
- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Newton Ira Waldman  
Chair, Public Arbitrator

7/5/05  
Signature Date

\_\_\_\_\_  
Dennis A. Torres  
Public Arbitrator

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

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Michael G. Clark  
Non-Public Arbitrator

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

7/7/05  
Date of Service


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Dennis A. Torres	-	Public Arbitrator
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Newton Ira Waldman  
Chair, Public Arbitrator

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Signature Date

  
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Dennis A. Torres  
Public Arbitrator

28 June 2005  
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Signature Date

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Michael G. Clark  
Non-Public Arbitrator

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Signature Date

7/7/05  
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Date of Service

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Chair, Public Arbitrator

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Signature Date

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Dennis A. Torres  
Public Arbitrator

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



\_\_\_\_\_  
Michael G. Clark  
Non-Public Arbitrator

July 28, 2005  
Signature Date

7/7/05  
Date of Service