

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

---

In the Matter of the Arbitration Between:

Alfred Hom, as an individual and as Trustee for the Alfred Hom 1998 Charitable Trust and the Alfred Hom Revocable Trust, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Carmen Kayee Woo, Respondents

Case Number: 04-01406

Hearing Site: San Francisco, California

---

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

**REPRESENTATION OF PARTIES**

For Claimants:

Thomas A. Schultz, Esq.  
Kyle E. Lakin, Esq.  
Lopez, Hodes, Retrains, Milman &  
Skikos  
Newport Beach, California

For Respondent Merrill Lynch, Pierce, Fenner  
& Smith, Inc. ("Merrill Lynch"):

Ben Suter, Esq.  
Kim Alexander, Esq.  
Keesal, Young & Logan  
San Francisco, California

For Respondent Carmen Kayee Woo ("Woo"):

In Propria Persona  
Clayton, California

**CASE INFORMATION**

Statement of Claim filed: February 24, 2004

First Amended Statement of Claim filed: January 21, 2005

Claimants' Uniform Submission Agreement signed: February 11, 2004

Statement of Answer filed by Respondent Merrill Lynch: May 28, 2004

Respondent Merrill Lynch's Uniform Submission Agreement signed: March 10, 2004

---

### **CASE SUMMARY**

In the Statement of Claim, Claimants alleged violations of federal and state securities laws, negligence, common law fraud, breach of fiduciary duty, breach of contract, respondeat superior, failure to supervise, and control person liability. Claimants' allegations involved various securities including, but not limited to, H&R Block stock, Washington Mutual stock, Class B Mutual Fund shares, and SunAmerica Polaris II Variable Annuity.

In the First Amended Statement of Claim, Claimants alleged common law fraud, breach of fiduciary duty, violation of the California Consumers Legal Remedies Act, violation of the California Welfare & Institutions Code, and breach of contract against the sole remaining respondent, Woo. Claimants' allegations involved a \$6,600.00 loan from Claimant to Woo.

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

Respondent Woo did not file answers to Claimants' Statements of Claim.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested \$650,000.00 in compensatory damages, pain and suffering damages, disgorgement, treble/punitive damages, interest and costs, including attorney's fees.

In the First Amended Statement of Claim, Claimants requested \$6,600.00 in compensatory damages, treble/punitive damages, interest, and costs, including attorney's fees.

Respondent Merrill Lynch requested dismissal of the Claimants' Statement of Claim in its entirety and costs.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Woo 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 ("the Code") and is bound by the determination of the Arbitrator on all issues submitted.

Upon review of the file and the representations made on behalf of the Claimants, the undersigned Arbitrator determined that Respondent Woo was properly served with the Statements of Claim and received due notice of the hearing, and that arbitration of the matter would proceed in accordance with the NASD Code of Arbitration Procedure.

On April 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 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 December 2, 2004, Claimants dismissed Respondent Merrill Lynch with prejudice.

On December 2, 2004, Claimants filed a motion to amend their Statement of Claim to narrow the focus of the arbitration to the \$6,600.00 Loan Claims remaining against the sole remaining respondent, Woo. In this motion, Claimants also requested that the amended claim be decided on the paper records only, without a formal hearing, and by only one arbitrator. Respondent Woo did not file an opposition to this motion. On January 4, 2005, the Panel granted the motion. Arbitrators Jeffrey M. Allen and Linda H. Perry-Cabrera withdrew from the Panel and the Chairperson Mary Margaret Bush became the sole arbitrator.

**AWARD**

After considering the pleadings, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Carmen Kayee Woo is liable to and shall pay Claimant Alfred Hom the sum of \$6,600.00 in compensatory damages.
- 2) Respondent Carmen Kayee Woo is liable to and shall pay Claimant Alfred Hom interest at the rate of 4% per annum on \$6,600.00 from August 29, 2002 to March 30, 2004 and interest at the rate of 10% on the total owed as of March 30, 2004 until date of payment of the complete sum owed.
- 3) Respondent Carmen Kayee Woo is liable to and shall pay Claimant the sum of \$5,425.00 in attorney's fees, pursuant to California Welfare and Institutions Code Section 15657.
- 4) Respondent Carmen Kayee Woo is assessed all NASD forum fees associated with this matter.
- 5) 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	= \$ 500.00
--------------------------	-------------

#### **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 Arbitrator 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 or the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$1,200.00
Pre-hearing conference: August 4, 2004 1 session	

Forum fee for a decision on the papers	= \$ 300.00
--	-------------

---

<b>Total Forum Fees</b>	<b>= \$1,500.00</b>
-------------------------	---------------------

1. The Arbitrator assessed the entire \$1,500.00 in forum fees to Respondent Carmen Kayee Woo.

**Fee Summary**

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

Initial Filing Fee	= \$ 500.00
<u>Less payments</u>	<u>= \$(1,700.00)</u>
<b>Refund Due</b>	<b>= \$(1,200.00)</b>
  
2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$(8,550.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
  
3. Respondent Carmen Kayee Woo is charged with the following fees and costs:

<u>Forum Fees</u>	<u>= \$ 1,500.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,500.00</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.

**ARBITRATOR**

Mary Margaret Bush

Public Arbitrator

**Arbitrator's Signature**

  
\_\_\_\_\_  
Mary Margaret Bush  
Public Arbitrator

3.24.05  
Signature Date

3/24/05  
Date of Service