

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

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In the Matter of the Arbitration Between:

Kenneth M. Brodine, Claimant v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and  
Diane M. Carter, Respondents

Case Number:04-02159

Hearing Site:Portland, Oregon

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

**REPRESENTATION OF PARTIES**

For Claimant:

Celeste Chiaramonte, Esq.  
Woska & Hayes, LLP  
Kingwood, Texas

For Respondents:

Thomas C. Sand, Esq.  
Ky Fullerton, Esq.  
Miller Nash LLP  
Portland, Oregon

**CASE INFORMATION**

Statement of Claim filed: March 26, 2004

Claimant's Uniform Submission Agreement signed: April 12, 2004

Joint Statement of Answer filed by Respondents: June 21, 2004

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

Respondent Diane M. Carter's Uniform Submission Agreement signed: June 8, 2004

### **CASE SUMMARY**

Claimant alleged breach of fiduciary duty, unsuitability, failure to supervise, breach of contract, over concentration, violation of the Know Your Customer Rule and violation of State Securities Act. Claimant's allegations involved the purchase of VHSI stock and Class B Mutual Funds.

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

### **RELIEF REQUESTED**

Claimant requested \$60,000.00 in compensatory damages, unspecified punitive damages, loss of earnings, pre-judgment interest at the maximum statutory rate, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, expungement of all reference to the above captioned arbitration from Respondent Diane Marie Carter's registration records maintained by NASD Central Registration Depository ("CRD"), and costs, including attorney's fees.

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

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) Claimant's claims are denied in their entirety.
- 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	= \$ 225.00
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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 and the following fees are assessed:

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 1,700.00
<b>Total Member Fees</b>	<b>= \$ 3,550.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

April 18-21, 2005, adjournment requested by Respondents	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 or the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: September 24, 2004	1 session

(6) Hearing sessions @ \$750.00/session	= \$ 4,500.00
Hearings: November 7, 2005	2 sessions
November 8, 2005	2 sessions
November 9, 2005	2 sessions

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<b>Total Forum Fees</b>	<b>= \$5,250.00</b>
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1. The Panel assessed \$2,625.00 of the forum fees to Claimant.
2. The Panel assessed \$2,625.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 2,625.00</u>
Total Fees	= \$ 2,850.00
<u>Less payments</u>	<u>= \$( 975.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,875.00</b>

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

Member Fees	= \$ 3,550.00
<u>Forum Fees</u>	<u>= \$ 2,625.00</u>
Total Fees	= \$ 6,175.00
<u>Less payments</u>	<u>= \$(3,550.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,625.00</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**

Christopher C. S. Blattner, Esq.	-	Public Arbitrator, Presiding Chair
Clyde Fahlman	-	Public Arbitrator
Larry H. Mylnechuk	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Christopher C. S. Blattner, Esq.  
Chair, Public Arbitrator

11-21-05  
Signature Date

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Clyde Fahlman  
Public Arbitrator

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

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Larry H. Mylnechuk  
Non-Public Arbitrator

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

11/22/05  
Date of Service

**ARBITRATION PANEL**

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Larry H. Mylnechuk	-	Non-Public Arbitrator

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Christopher C. S. Blattner, Esq.  
Chair, Public Arbitrator

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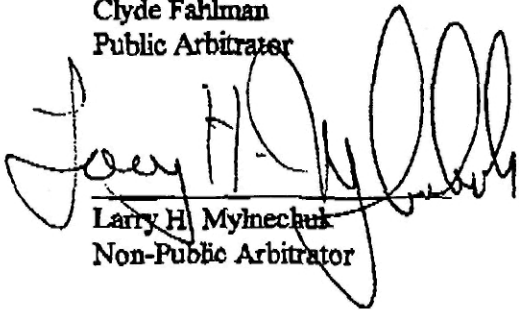
Signature Date

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Clyde Fahlman  
Public Arbitrator

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Signature Date



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Larry H. Mylnechuk  
Non-Public Arbitrator

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Signature Date

11/22/05

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Date of Service

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Christopher C. S. Blattner, Esq.  
Chair, Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Clyde Fahlman  
Public Arbitrator

12-16-05  
Signature Date

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Larry H. Mylnechuk  
Non-Public Arbitrator

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Signature Date

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Date of Service