

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

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In the Matter of the Arbitration Between:

James R. Carskadon, and MLFP&S FPO James R. Carskadon IRRA, Claimants v. Merrill Lynch  
Pierce, Fenner & Smith, Inc., Respondent

Case Number: 04-03184

Hearing Site: Portland, Oregon

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Nature of the Dispute: Customers v. Member

**REPRESENTATION OF PARTIES**

For Claimants:

Robert S. Banks, Jr., Esq.  
Banks Law Office, P.C.  
Portland, Oregon

For Respondent:

Ky Fullerton, Esq.  
Miller Nash  
Portland, Oregon

**CASE INFORMATION**

Statement of Claim filed: April 29, 2004

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

Statement of Answer filed by Respondent: July 6, 2004

Respondent's Uniform Submission Agreement signed: June 9, 2004

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**CASE SUMMARY**

Claimants alleged violations of Oregon Securities Laws, breach of fiduciary duty and negligence involving the purchase of various technology stocks including Applied Materials, Internet Infrastructure, Nokia and Vitese Semiconductor in Claimants' IRA account.

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

**RELIEF REQUESTED**

Claimants requested \$68,000.00 in compensatory damages, pre- and post-judgment interest and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety, 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) Respondent is liable and shall pay Claimants compensatory damages in the sum of \$64,969.00.
- 2) Respondent is liable to and shall pay Claimants the sum of \$225.00 as reimbursement for filing costs.
- 3) Respondent is liable to and shall pay Claimants the sum of \$23,895.00 in attorney's fees, pursuant to ORS §59.115.
- 4) Respondent is liable and shall pay interest at a rate of 9% per annum on the sum of \$64,969.00 from July 1, 2002 until payment of this award is made in full.
- 5) Except as noted above, the parties shall bear their respective costs.
- 6) 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, Inc. 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:

February 15-16, 2005, adjournment requested by Respondent	Waived
Last Minute Adjournment Fee assessed to Respondent	Waived

**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:

(2) Pre-hearing conference sessions with the Panel @ \$ 750.00/session	= \$ 1,500.00
Pre-hearing conferences: August 26, 2004	1 session
February 15, 2005	1 session
(3) Hearing sessions @ \$750.00/session	= \$ 2,250.00
Hearings: March 11, 2005	2 sessions
March 12, 2005	1 session

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<b>Total Forum Fees</b>	<b>= \$ 3,750.00</b>
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The Panel assessed \$3,750.00 of the forum fees Respondent.

**Fee Summary**

1. Claimants are charged with the following fees and costs:	
Initial Filing Fee	= \$ 225.00
Less payments	= \$( 975.00)
<b>Refund Due Claimant</b>	<b>= \$ (750.00)</b>
2. Respondent is charged with the following fees and costs:	
Member Fees	= \$ 3,550.00
Forum Fees	= \$ 3,750.00
Total Fees	= \$ 7,300.00
Less payments	= \$(3,550.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,750.00</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**

Bert P. Krages, II	-	Public Arbitrator, Presiding Chair
Keith Folkman	-	Public Arbitrator
Peter Frank Bozikovich	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Bert P. Krages, II

Bert P. Krages, II  
Chair, Public Arbitrator

3-18-05  
Signature Date

Keith Folkman  
Public Arbitrator

Signature Date

Peter Frank Bozikovich  
Non-Public Arbitrator

Signature Date

3/18/05  
Date of Service

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