

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Duane W. Parrish and Karen J. Parrish, Claimants v. Merrill Lynch, Pierce, Fenner & Smith Incorporated and Susan Kay Levison, Respondents

Case Number: 05-02297

Hearing Site: Seattle, Washington

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

**REPRESENTATION OF PARTIES**

For Claimants Duane W. Parrish and Karen J. Parrish:

Derek Y. Brandt, Esq.  
Nicholas P. Iavarone, Esq.  
Simmons Cooper LLC  
East Alton, Illinois

For Respondents Merrill Lynch, Pierce, Fenner & Smith  
Incorporated and Susan Kay Levison:

Bill Powell Guest, Esq.  
Day Edwards Proposter &  
Christensen  
Oklahoma City, Oklahoma

**CASE INFORMATION**

Statement of Claim filed: April 29, 2005

Claimants Duane W. Parrish and Karen J. Parrish's Joint Uniform Submission  
Agreement signed but not dated

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith  
Incorporated and Susan Kay Levison: July 7, 2005

Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated's Uniform Submission  
Agreement signed: May 19, 2005

Respondent Susan Kay Levison's Uniform Submission Agreement signed: June 10,  
2005

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, breach of contract, violation of the Securities Exchange Act of 1934, violation of the Washington Securities Act, negligence, and failure to supervise. The causes of action relate to Respondents' alleged failure to diversify the holdings in Claimants' accounts and failure to fully disclose the risks of investing on margin.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested \$1,900,00.00 in compensatory damages, punitive damages in excess of \$5,700,000.00, pre-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety, expungement of this matter from Respondent Susan Kay Levison's CRD records, and costs.

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

On July 7, 2005, Respondents filed a Motion to Strike Irrelevant Portions of the Statement of Claim (hereinafter "Motion to Strike"). On December 15, 2005, Claimants filed an Objection to and Response to Respondents' Motion to Strike. On January 6, 2006, the Panel heard oral argument from the parties regarding the motion. On January 18, 2006, the Panel issued an Order denying Respondents' Motion to Strike.

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, evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) Respondents' request for expungement of this matter from the CRD records of Respondent Susan Kay Levison is denied.

- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) Any and all relief not specifically addressed herein, including punitive damages, 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	= \$ 600.00
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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	= \$3,350.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$5,500.00
<b>Total Member Fees</b>	<b>= \$9,600.00</b>

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

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related dispute 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:

One (1) decision on a discovery-related dispute on the papers with (1) one arbitrator @ \$200.00	= \$ 200.00
Respondent submitted a subpoena directed to Black Box Corporation	

One (1) pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conferences: March 13, 2006	1 session

Three (3) pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$3,600.00
Pre-hearing conferences: September 15, 2005	1 session
January 4, 2006	1 session
January 6, 2006	1 session

Seven (7) hearing sessions @ \$1,200.00/session		= \$ 8,400.00
Hearings:	June 13, 2006	2 sessions
	June 14, 2006	2 sessions
	June 15, 2006	2 sessions
	June 16, 2006	1 session
<b>Total Forum Fees</b>		<b>= \$ 12,650.00</b>

1. The Panel assessed \$5,725.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$5,725.00 of the forum fees jointly and severally to Respondents.
3. The Panel waived \$1,200.00 of the forum fees for the January 4, 2006 pre-hearing conference.

**Fee Summary**

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

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 5,725.00
Total Fees	= \$ 6,325.00
Less payments	= \$(1,800.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 4,525.00</b>
2. Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is charged with the following fees and costs:

Member Fees	= \$ 9,600.00
Less payments	= \$(9,600.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
3. Respondents Merrill Lynch, Pierce, Fenner & Smith Incorporated and Susan Kay Levison are charged jointly and severally with the following fees and costs:

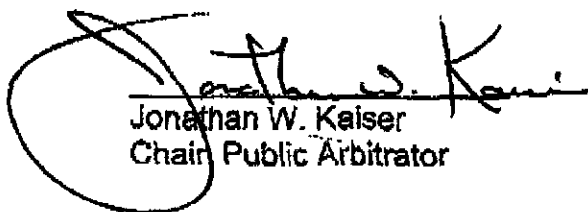
Forum Fees	= \$ 5,725.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,725.00</b>

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**

<b>Jonathan W. Kaiser</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Ronald S. Matthew</b>	-	<b>Public Arbitrator</b>
<b>Keith R. Anderson</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

  
Jonathan W. Kaiser  
Chair Public Arbitrator

7/19/2006  
Signature Date

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Ronald S. Matthew  
Public Arbitrator

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

\_\_\_\_\_  
Keith R. Anderson  
Non-Public Arbitrator

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

7/20/06  
Date of Service


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<b>Ronald S. Matthew</b>	-	<b>Public Arbitrator</b>
<b>Keith R. Anderson</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

Jonathan W. Kaiser  
Chair, Public Arbitrator

Signature Date



Ronald S. Matthew  
Public Arbitrator

July 18, 2006  
Signature Date

Keith R. Anderson  
Non-Public Arbitrator

Signature Date

7/20/06  
Date of Service

**ARBITRATION PANEL**

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<b>Ronald S. Matthew</b>	-	<b>Public Arbitrator</b>
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