

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Carolyn Poinier Speakman

v.

05-02896  
Denver, Colorado

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.,  
Michael J. Hecht and Lary L. Speakman

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**NATURE OF DISPUTE**

Customer v. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

Carolyn Poinier Speakman ("**Claimant**") was represented by C. Brad Peterson, Esq., of Hutchinson Black and Cook, LLC, Denver, Colorado.

Merrill Lynch Pierce Fenner & Smith, Inc. ("**Merrill Lynch**") and Michael J. Hecht ("**Hecht**"), were represented by J David Jackson, Esq., of Dorsey & Whitney, LLP, Minneapolis, Minnesota.

Lary L. Speakman ("**Lary Speakman**") appeared at the hearing pro se. Lary Speakman was represented by Tamara A. Hoffbuhr, Esq., of Fairfield and Woods, P.C., Denver, Colorado until a Notice of Withdrawal was filed on or about February 7, 2006.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 1, 2005. The Submission Agreement of Claimant was signed on or about June 1, 2005.

A Statement of Answer was filed by Lary L. Speakman on or about August 11, 2005. The Submission Agreement Lary L. Speakman was signed on or about August 11, 2005.

Claimant filed an Amended Statement of Claim on or about August 30, 2005.

Lary Speakman filed an Amended Statement of Answer on or about September 22, 2005.

A Statement of Answer was filed by Merrill Lynch on or about October 4, 2005. The Submission Agreement of Merrill Lynch was signed on or about October 4, 2005.

A Statement of Answer was filed by Hecht on or about October 4, 2005. The Submission Agreement of Hecht was signed on or about October 10, 2005.

### **CASE SUMMARY**

Claimant asserted causes of action including the following: breach of fiduciary duty, unauthorized trading, failure to supervise, respondeat superior, control person liability, outrageous conduct, violation of federal and state securities laws, fraudulent misrepresentations, negligence and violation of the Colorado Consumer Protection Act. Claimant alleged that funds and equities were transferred from her accounts by her broker, Lary Speakman, without her knowledge or authorization. Claimant also alleged that checks were forged by Lary Speakman, on Claimant's accounts without her knowledge or authorization and were used for the personal benefit of Lary Speakman. Claimant further alleged that Merrill Lynch was a controlling person and therefore responsible for supervising the actions of Lary Speakman and his supervisor Hecht, with respect to Claimant's accounts.

Merrill Lynch denied the allegations set forth in the Statement of Claim and asserted defenses including the following: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant knowingly assumed the risks of the activities that took place in her accounts; Claimant's claims are barred by the doctrines of ratification, estoppel and/or waiver; Claimant cannot recover against Merrill Lynch because it maintained an adequate and reasonable system of supervision and control of its registered representatives, and acted at all times in good faith, in accordance with industry standards of conduct and in compliance with all applicable securities laws and regulations; and to the extent Claimant sustained damages, such damages were caused, in whole or in part, by the culpable conduct, fault, assumption of risk, negligence, intentional acts and/or other wrongful conduct on the part of Claimant, and therefore are not recoverable from Merrill Lynch.

Hecht denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant knowingly assumed the risks of the activities that took place in her accounts; Hecht, at all times, acted in good faith; Claimant's claims are barred, in whole or in part, by the doctrine of unclean hands; Claimant failed to take reasonable steps to mitigate her damages; to the extent that Claimant suffered damages, such damages were caused, in whole or in part, by the culpable conduct, fault, assumption of risk, negligence, intentional acts and/or other wrongful conduct on the part of Claimant; and Claimant gave expressed or apparent authority for all complained of transactions in her account and therefore is barred from recovery.

Lary Speakman denied the allegations set forth in the Statement of Claim and asserted defenses including the following: to the extent that Claimant suffered financial losses, such

losses were caused by or contributed to by Claimant, or by factors, economic conditions, market conditions or circumstances that were beyond the control of Lary Speakman; Claimant's claims are barred by her own assumption and acceptance of risk of losses in the marketplace; Claimant authorized the conduct of Lary Speakman of which Claimant is now complaining; some or all of Claimant's claims are barred by the equitable doctrines of waiver, laches, estoppel and ratification; there was no fiduciary duty owed by or breach of fiduciary duty committed by Lary Speakman; Lary Speakman acted in compliance with all applicable rules and regulations in good faith; and Claimant's transactions were appropriately entered into in accordance with industry standards and legal and regulatory requirements.

### **RELIEF REQUESTED**

Claimant requested an award of \$2,500,000.00 in compensatory damages; plus reimbursement of commissions, management fees and margin interest; indemnification for any consequential and incidental damages, including tax liabilities; punitive damages; interest; costs; attorneys' fees; and any other relief the panel deemed just and equitable.

Merrill Lynch requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Hecht requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

Lary Speakman requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

At the arbitration hearing, Respondents, Merrill Lynch and Hecht, made an oral Motion to Dismiss all claims asserted against Respondent Hecht. After deliberation, the panel denied and dismissed all claims asserted against Respondent Hecht.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Lary L. Speakman, is solely liable for and shall pay to Claimant, Carolyn Poinier Speakman, One Million Two Hundred Forty Two Thousand One Hundred Dollars and No Cents (\$1,242,100.00) in compensatory damages;
2. Respondent, Lary L. Speakman, is solely liable for and shall pay to Claimant, Carolyn Poinier Speakman, interest on the above stated-sum at the rate of 8% per annum, from and including thirty days from the date of service of this Award through and including the date this Award is paid in full;
3. In addition to the damages awarded against Lary Speakman individually, Respondents, Lary L. Speakman and Merrill Lynch Pierce Fenner & Smith, Inc., are jointly and severally liable for and shall pay to Claimant, Carolyn Poinier Speakman, One Million Two Hundred Twenty Five Thousand Dollars and No Cents (\$1,225,000.00) in compensatory damages;
4. In addition to the damages awarded against Lary Speakman individually, Respondents, Lary L. Speakman and Merrill Lynch Pierce Fenner & Smith, Inc., are jointly and severally liable for and shall pay to Claimant, Carolyn Poinier Speakman, interest on the above-stated sum at the rate of 8% per annum, from and including thirty days from the date of service of this Award through and including the date this Award is paid in full;
5. Respondents, Lary L. Speakman and Merrill Lynch Pierce Fenner & Smith, Inc., are jointly and severally liable for and shall pay to Claimant, Carolyn Poinier Speakman, One Hundred Twenty Six Thousand One Hundred Forty One Dollars and Twenty Cents (\$126,141.20) in attorneys' fees pursuant to the Colorado Securities Act §11-51-604(4), C.R.S.;
6. Respondents, Lary L. Speakman and Merrill Lynch Pierce Fenner & Smith, Inc., are jointly and severally liable for and shall pay to Claimant, Carolyn Poinier Speakman, Sixty Three Thousand Eight Hundred Seventy Three Dollars and Twenty Nine Cents(\$63,873.29) in costs pursuant to the Colorado Securities Act §11-51-604(4), C.R.S.;
7. Claimant's claims, asserted against Respondent Michael J. Hecht, are denied and dismissed with prejudice in their entirety; and
8. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages are denied with prejudice.

## **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 500

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Merrill Lynch Pierce Fenner & Smith, Inc.

Member surcharge = \$ 2,800

Pre-hearing process fee = \$ 750

Hearing process fee = \$ 5,000

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Chairperson x \$ 450 = \$ 450

Pre-hearing conference: May 11, 2006 1 session

Two (2) Pre-hearing sessions with the Panel x \$ 1,200 = \$ 2,400

Pre-hearing conferences: December 13, 2005 1 session  
May 26, 2006 1 session

Ten (10) Hearing sessions with the Panel x \$ 1,200 = \$ 12,000

Hearing Dates: June 5, 2006 2 sessions  
June 6, 2006 2 sessions  
June 7, 2006 2 sessions  
June 8, 2006 2 sessions

June 9, 2006

2 sessions

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Total Forum Fees = \$ 14,850

The Arbitration Panel has assessed \$ 7,425 of the forum fees to Carolyn Poinier Speakman.

The Arbitration Panel has assessed \$ 7,425 of the forum fees jointly and severally to Merrill Lynch Pierce Fenner & Smith, Inc., and Lary L. Speakman.

**FEE SUMMARY**

Claimant, Carolyn Poinier Speakman, is liable for:

|                                     |            |
|-------------------------------------|------------|
| Initial Filing Fee                  | = \$ 500   |
| Forum Fees                          | = \$ 7,425 |
| Total Fees                          | = \$ 7,925 |
| Less payments                       | = \$ 1,800 |
| Balance Due NASD Dispute Resolution | = \$ 6,125 |

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., is liable for:

|                                     |            |
|-------------------------------------|------------|
| Member Fees                         | = \$ 8,550 |
| Total Fees                          | = \$ 8,550 |
| Less payments                       | = \$ 8,550 |
| Balance Due NASD Dispute Resolution | = \$ 0     |

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., and Lary L. Speakman, are jointly and severally liable for:

|                                     |            |
|-------------------------------------|------------|
| Forum Fees                          | = \$ 7,425 |
| Total Fees                          | = \$ 7,425 |
| Less payments                       | = \$ 750   |
| Balance Due NASD Dispute Resolution | = \$ 6,675 |

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

**ARBITRATION PANEL**

Gerald Raskin, Esq. - Public Arbitrator, Presiding Chair  
Richard Djokic, Esq. - Public Arbitrator  
Bernard A. Clark - Non-Public Arbitrator

Concurring Arbitrators:

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Gerald Raskin, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Richard Djokic, Esq.  
Public Arbitrator

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Signature Date

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Bernard A. Clark  
Non-Public Arbitrator

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Signature Date

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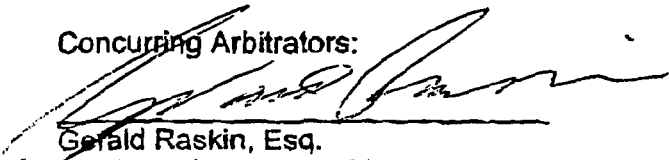
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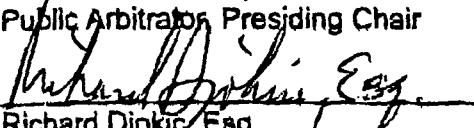
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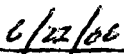
  
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