

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Michael A. Phillip

Case Number: 15-00622

vs.

Respondents
Merrill Lynch International Finance, Inc.
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Los Angeles, California

Nature of the Dispute: Associated Person vs. Member and Non-Member

REPRESENTATION OF PARTIES

Claimant Michael A. Phillip, hereinafter referred to as "Claimant": Robert J. Girard, II, Esq., Girard Bengali, APC, Los Angeles, California

Respondents Merrill Lynch International Finance, Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), hereinafter collectively referred to as "Respondents": Christopher S. Koller, Esq., Rubin, Fortunato & Harbison, P.C., Paoli, Pennsylvania

CASE INFORMATION

First Amended Statement of Claim dated: April 27, 2015
Claimant signed the Submission Agreement: March 11, 2015

Statement of Answer filed by Respondents on or about: July 20, 2016
Respondents signed Submission Agreements: July 20, 2015

CASE SUMMARY

Claimant asserted the following causes of action: wrongful termination, violations of the California Labor Code, breach of contract, breach of the covenant of good faith and fair dealing, interference with prospective business advantage, violations of California Business and Professions Code, quantum meruit/unjust enrichment, the retention bonus was a contract of adhesion and therefore void and unenforceable as a matter of law and equity, and intentional infliction of emotional distress. The causes of action relate to Claimant's former employment with Respondents.

Unless specifically admitted in the Statement of Answer, Respondents denied the allegations made in the First Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the First Amended Statement of Claim, Claimant requested:

1. Actual damages in a sum in excess of \$4,000,000.00;
2. Damages for pain and suffering at a minimum of \$500,000.00;
3. All wages and other benefits wrongfully withheld by Respondents together with interest, penalties and attorneys' fees;
4. Prejudgment interest at the California statutory rate of 10% per annum;
5. Reimbursement of \$91,785.05 representing the full amount paid to Respondents after his wrongful discharge;
6. Costs of this proceeding be assessed against Respondents;
7. Attorneys' fees and expert witness fees incurred as a result of this arbitration;
8. Punitive damages;
9. Correction of Claimant's Central Registration Depository ("CRD") records Form U5 with regard to section 7B and to state "No" instead of "Yes," and expungement of the accompanying Disclosure Reporting Page(s);
10. Expungement of Claimant's CRD record of any other reference to the improper allegations and "disclosure" made by Respondents; and
11. Such other and further relief as the Panel deems just and appropriate under the circumstances.

In the Statement of Answer, Respondents requested:

1. Denial of the Statement of Claim in its entirety;
2. Costs be assessed against Claimant; and
3. All other relief that the Panel deems reasonable and appropriate under the circumstances.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On or about September 29, 2016, Claimant's counsel advised FINRA Office of Dispute Resolution that he settled all claims with Respondents except for the request to expunge Claimant's Form U5.

The Panel conducted a recorded in-person hearing on November 15, 2016, so the parties could present testimony and evidence on Claimant's request to expunge his Form U5. Respondents' counsel appeared at the hearing and opposed Claimant's request.

The Panel has 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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel recommends expungement of the "Yes" answer to Section 7F(1) Termination Disclosure and its change to "No" and that the Termination Disclosure Reporting page be deleted in its entirety in Michael A. Phillip's (CRD # 2095551) Form U5 dated October 28, 2014, filed by Merrill Lynch and maintained by CRD. The Reason for Termination shall remain the same. The Panel recommends this expungement because the Panel has concluded that Merrill Lynch's answer was incorrect. This recommendation applies to any subsequent disclosures concerning this event including, but not limited to, Section 14J(1) of the Form U4 filed on November 25, 2014 and the Amended Form U4 filed on January 6, 2015, by Raymond James & Associates, Inc. and Claimant's BrokerCheck Report.

The Panel makes these recommendations based on the defamatory nature of the information. Pursuant to Notice to Members 99-54, this is not a finding that Claimant has established a claim for defamation under existing law. The Forms U5 and U4 are not automatically amended to include the changes indicated above. Claimant Michael A. Phillip must forward a copy of this Award to FINRA's Registration and Disclosure Department for the amendments to be incorporated into the registration records.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee = \$2,000.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83 (2000), Michael A. Philip is assessed a \$200.00 filing fee. The balance of the nonrefundable portion of the filing fee, in the amount of \$400.00, is assessed to Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated.

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Merrill Lynch, Pierce, Fenner & Smith Incorporated is assessed the following:

Member Surcharge = \$ 3,025.00
Member Process Fee = \$ 6,175.00

Adjournment Fees

Adjournments granted during these proceedings:

October 11- 14, 17-18, 2016, adjournment by parties = WAIVED

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. 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) pre-hearing session with a single arbitrator @ \$ 450.00/session =\$ 450.00
Pre-hearing conference: August 11, 2016 1 session

Three (3) pre-hearing sessions with the Panel @ \$1,400.00/session =\$4,200.00
Pre-hearing conferences: November 5, 2015 1 session
September 16, 2016 1 session
October 10, 2016 1 session

Two (2) hearing sessions @ \$ 1,400.00/session =\$2,800.00
Hearing Date: November 15, 2016 2 sessions

Total Hearing Session Fees =\$7,450.00

Pursuant to Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83 (2000), the Panel has assessed \$7,450.00 of the hearing session fees solely to Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated.

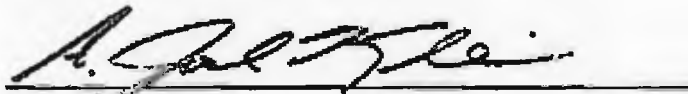
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

A. Joel Klein	-	Public Arbitrator, Presiding Chairperson
Rosa Linda Guadarrama	-	Public Arbitrator
Steven A. Wawra	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures



A. Joel Klein
Public Arbitrator, Presiding Chairperson

12/2/16

Signature Date

Rosa Linda Guadarrama
Public Arbitrator

Signature Date

Steven A. Wawra
Non-Public Arbitrator

Signature Date

December 2, 2016
Date of Service (For FINRA Office of Dispute Resolution office use only)

ARBITRATION PANEL

A. Joel Klein
Rosa Linda Guadarrama
Steven A. Wawra

-
-
-

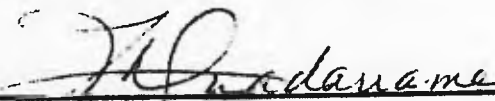
Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

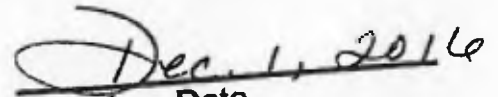
Concurring Arbitrators' Signatures

A. Joel Klein
Public Arbitrator, Presiding Chairperson

Signature Date



Rosa Linda Guadarrama
Public Arbitrator



Signature Date

Steven A. Wawra
Non-Public Arbitrator

Signature Date

December 2, 2016

Date of Service (For FINRA Office of Dispute Resolution office use only)

ARBITRATION PANEL

A. Joel Klein	-	Public Arbitrator, Presiding Chairperson
Rosa Linda Guadarrama	-	Public Arbitrator
Steven A. Wawra	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

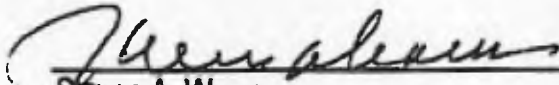
Concurring Arbitrators' Signatures

A. Joel Klein
Public Arbitrator, Presiding Chairperson

Signature Date

Rosa Linda Guadarrama
Public Arbitrator

Signature Date



Steven A. Wawra
Non-Public Arbitrator

12/2/16

Signature Date

December 2, 2016
Date of Service (For FINRA Office of Dispute Resolution office use only)