

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Summit Financial Services Group, Inc., (Claimant) vs. Merrill Lynch, Pierce, Fenner, & Smith, Inc., Deena Kobrin, Daniel Shainheit, and Terry Axel, (Respondents)

Case Number: 00-00110

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Summit Financial Services Group, Inc. ("Summit"), hereinafter referred to as "Claimant": Richard F. Collier, Esq., and Christopher Walsh, Jr., Esq., Collier Jacob & Mills, P.C., Somerset NJ.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"): Steven Wallach, Esq., a sole practitioner, Princeton, NJ.

Respondent, Deena M. Kobrin ("Kobrin"): Nathan Edelstein, Esq., Ridolfi, Friedman, Frank, Edelstein & Backinoff, Lawrenceville, NJ.

Respondent, Terry Axel ("Axel"): Philip B. Papier, Jr., Esq., a sole practitioner, Princeton, NJ.

CASE INFORMATION

Statement of Claim filed on or about: January 10, 2000.
Claimant signed the Uniform Submission Agreement.

Statement of Answer filed by Merrill on or about: February 23, 2000.
Merrill signed the Uniform Submission Agreement: February 25, 2000.

Statement of Answer filed by Kobrin on or about: February 24, 2000.
Kobrin signed the Uniform Submission Agreement: February 24, 2000.

Statement of Answer filed by Axel on or about: March 8, 2000.
Axel signed the Uniform Submission Agreement: March 7, 2000.

CASE SUMMARY

Claimant asserted the following causes of action: breach of confidentiality agreement; breach of duty of loyalty; misappropriation of trade secrets and confidential information; unfair competition; conversion; tortious interference with contract and business relations; corporate raiding; and civil conspiracy.

Unless specifically admitted in its Answer, Merrill denied the allegations made in the Statement of Claim and asserted the following defenses: Kobrin, Axel, and Shainheit sought out Merrill through a recruitment firm and Merrill made no outreach effort towards any Summit employee. Merrill also adopted and incorporated by reference the Answers and defenses raised by the other Respondents.

Unless specifically admitted in her Answer, Kobrin denied the allegations made in the Statement of Claim and asserted the following defenses: the allegations in the Statement of Claim are factually untrue, and incorrect as a matter of law; Claimant suffers no irreparable injury and the allegations in the Statement of Claim to this effect are mis-statements and have been incorrectly verified; Kobrin was compelled to leave employment at Summit because of outrageous sexual harassment and the hostile work environment; Kobrin's confidentiality agreement only pertains to customers procured by Kobrin during her tenure at Summit; there is no factual basis on which Claimant could properly verify its claim; the confidentiality agreement does not apply to customers brought by Kobrin with her from her previous employer to Summit, nor to clients that she developed through resources entirely unrelated to Summit, nor to customers with whom she developed relationships prior to the commencement of her employment with Summit; Summit is unable to identify those customers and/or accounts which it claims belong to it, and which have transferred to Merrill; there are no damages except *arguendo* for a *de minimus* amount involved in this case; Kobrin did not solicit Summit's clients; Summit's delays in commencing this arbitration belie any allegations that there is irreparable harm to them; Summit is barred by the doctrine of unclean hands; Kobrin is entitled to pursue her livelihood as an investment counselor at Merrill without interference by Summit; the agreement Summit seeks to enforce is a contract of adhesion under New Jersey law, and is null and void and unenforceable; and Kobrin has not signed an agreement to arbitrate with Summit. Kobrin also adopted and incorporated by reference the Answers and defenses raised by the other Respondents.

Unless specifically admitted in his Answer, Axel denied the allegations made in the Statement of Claim and asserted the following defenses: Axel's employment agreement is void for lack of consideration under Pennsylvania law; Axel's employment agreement is unenforceable as a contract of adhesion under New Jersey law; Axel's employment agreement is unenforceable since Summit breached the obligation of good faith required under New Jersey law and because it was signed under duress; assuming Axel's employment agreement is enforceable, it does not pertain to clients obtained prior to its execution; Axel cannot be legally responsible for any Summit clients that decide to leave Summit as he was not an insurer of Summit's economic health; Axel is entitled to notify his friends and long term clients with whom he had a personal relationship of his whereabouts after leaving Summit; and Summit has reduced any damages to a *de minimus* level by its aggressive actions concerning Axel's former clients and misrepresenting Axel's whereabouts. Axel also adopted and incorporated by reference the Answers and defenses raised by the other Respondents.

RELIEF REQUESTED

Claimant requested:

1. The issuance of a permanent injunction restraining and enjoining Kobrin and Axel, as well as all persons in active concert or participation with them, from: (i) directly or indirectly soliciting, inducing, encouraging, or influencing any current customer of Summit or anyone who was a customer of Summit to become a customer of Merrill or any other person or firm for the purchase of securities, annuities, or any other related financial product; (ii) directly or indirectly revealing to any person or company any trade secrets or confidential information belonging to Summit; (iii) using any and all trade secrets or confidential information belonging to Summit; and (iv) doing business with any customers they have already solicited on behalf of Merrill.

2. The issuance of a permanent injunction restraining and enjoining Merrill, as well as all persons and entities in active concert or participation with Merrill, from: (i) employing, hiring, or retaining any registered representative from Summit within one year from the date on which Merrill last hired, retained, or employed a registered representative from Summit; (ii) employing, hiring, or retaining any registered representative from Summit without first inquiring of that representative whether he or she is subject to any post-employment obligations to Summit; (iii) encouraging or inducing any registered representatives formerly employed by Summit to breach his or her post-employment obligations to Summit; (iv) requesting or accepting the disclosure of any trade secrets or confidential information belonging to Summit from any current or former employee of Summit; (v) using or disclosing any trade secrets or confidential information belonging to Summit; (vi) making solicitations on behalf of any registered representative while that

registered representative is employed by Summit; and (vii) doing business with any Summit customers who have been solicited by Kobrin, Axel, and/or Shainheit on behalf of Merrill.

3. A final Award granting Summit the following relief: (i) damages, in an amount to be determined at the hearing in this matter, incurred by Summit as a result of the unlawful actions of Kobrin, Axel, and Merrill; (ii) an accounting and disgorgement of any profits earned by Kobrin, Axel, and Merrill on accounts transferred to Merrill from Summit as a result of any solicitation by Kobrin, Axel, and/or Shainheit in breach of their confidentiality agreements; (iii) punitive damages against Kobrin, Axel, and Merrill for their tortious and malicious conduct; (iv) costs and disbursements of this action, including reasonable attorneys' fees; and (v) such other and further relief as the Panel may deem equitable and just.

Merrill, Kobrin, and Axel did not make any relief requests in their respective Answers.

Subsequently, Kobrin filed an application requesting attorneys' fees in the amount of \$96,400.00 and disbursements in the amount of \$7,206.02.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearing in this matter, Merrill made a motion for a directed verdict in its favor at the conclusion of Claimant's direct case. The Panel denied this motion.

Prior to the hearing in this matter, Claimant dismissed with prejudice all claims against Respondent Shainheit.

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.

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:

1. Merrill be and hereby is solely liable for and shall pay to Claimant the sum of \$66,217.00 as compensatory damages.
2. Kobrin be and hereby is solely liable for and shall pay to Claimant the sum of \$2,403.00 as compensatory damages.

3. Axel be and hereby is solely liable for and shall pay to Claimant the sum of \$1,403.00 as compensatory damages.
4. *Claimant's request for punitive damages is hereby denied.*
5. Kobrin be and hereby is solely liable for and shall pay to Claimant the sum of \$2,500.00 as attorneys' fees. The Panel awarded attorneys' fees pursuant to the terms of the confidentiality agreement signed by Kobrin. *
6. Axel be and hereby is solely liable for and shall pay to Claimant the sum of \$20,000.00 as attorneys' fees. The Panel awarded attorneys' fees pursuant to the terms of the confidentiality agreement signed by Axel.
7. Axel, Merrill, and their employees, agents, representatives, and all parties in active concert or participation with them are hereby restrained and enjoined until January 20, 2001 from soliciting any current or former customers of Summit who were serviced by Axel after he executed the confidentiality agreement dated February 1, 1998, to become a customer of Merrill or any other person or firm for the purchase of securities, annuities, or any other related financial product, except that this prohibition shall not be construed as applying to the servicing of any accounts for which an "ACAT" is received by Axel or Merrill.
8. All other requests for relief are hereby denied.

* Arbitrator Steinberg dissents from this determination.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
Injunctive Relief fee	= \$ 2,500.00

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, Summit Financial Services Group, Inc. and Merrill Lynch, Pierce, Fenner & Smith, Inc. are parties.

Summit Financial Services Group, Inc.

Member surcharge	= \$ 1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,000.00

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Member surcharge	= \$ 1,200.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,000.00

Forum Fees and Assessments

The 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:

Two (2) Pre-hearing sessions with Panel x \$1,000.00	= \$ 2,000.00
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Pre-hearing conferences:	May 24, 2000	1 session
	September 7, 2000	1 session

Ten (10) Hearing sessions x \$1,000.00	= \$10,000.00
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Hearing Dates:	September 18, 2000	2 sessions
	September 19, 2000	2 sessions
	September 20, 2000	2 sessions
	September 27, 2000	2 sessions
	September 28, 2000	2 sessions

Total Forum Fees	= \$12,000.00
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1. The Panel has assessed \$6,000.00 of the forum fees against Merrill.
2. The Panel has assessed \$3,000.00 of the forum fees against Kobrin.
3. The Panel has assessed \$3,000.00 of the forum fees against Axel.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
Injunctive Relief Fee	= \$ 2,500.00
<u>Member Fees</u>	<u>= \$ 3,800.00</u>
Total Fees	= \$ 6,800.00
<u>Less payments</u>	<u>= \$ 5,300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,500.00

2. Merrill be and hereby is solely liable for:

Member Fees	= \$ 3,800.00
<u>Forum Fees</u>	<u>= \$ 6,000.00</u>
Total Fees	= \$ 9,800.00
<u>Less payments</u>	<u>= \$ 3,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 6,000.00

3. Kobrin be and hereby is solely liable for:

<u>Forum Fees</u>	<u>= \$ 3,000.00</u>
Total Fees	= \$ 3,000.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,000.00

4. Axel be and hereby is solely liable for:

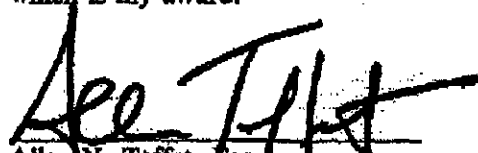
<u>Forum Fees</u>	<u>= \$ 3,000.00</u>
Total Fees	= \$ 3,000.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,000.00

All balances are due and payable to NASD Dispute Resolution, Inc.

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Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Allan N. Taffet, Esq.
Public Arbitrator, Presiding Chair

10/25/00
Signature Date

Arnold O. Flicker, Esq.
Public Arbitrator

Signature Date

Jeffrey Steinberg
Industry Arbitrator

Signature Date

October 26, 2000
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Allan N. Taffet, Esq.
Public Arbitrator, Presiding Chair

Signature Date

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Allan N. Taffet, Esq.
Public Arbitrator, Presiding Chair

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Arnold O. Flicker, Esq.
Public Arbitrator

Signature Date



Jeffrey Steinberg
Industry Arbitrator

10-20-2000

Signature Date

October 26, 2000
Date of Service (For NASD office use only)