

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:
Craig Larson, Claimant vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.,
Respondent.

Case Number: 98-04958 Hearing Site: Milwaukee, Wisconsin

REPRESENTATION OF PARTIES

Claimant, Craig Larson, "Larson", hereinafter referred to as "Claimant", was represented by James J. Eccleston, Esq., of Eccleston & Associates, P.C., Chicago, Illinois.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., "Merrill Lynch", hereinafter referred to as "Respondent", was represented by Jeffrey J. Liotta, Esq., of Whyte, Hirschboeck & Dudek, S.C., Menomonee Falls, Wisconsin.

CASE INFORMATION

Statement of Claim filed on or about: December 28, 1998

Claimant signed the Uniform Submission Agreement: December 16, 1998

Statement of Answer and Counterclaim filed by Respondent on or about: June 4, 1999

Judith A. Perry, Resident Vice President for Respondent, Merrill Lynch, signed the Uniform Submission Agreement: May 25, 1999

Claimant's Answer to Respondent's Counterclaim filed on or about: August 30, 1999

CASE SUMMARY

Claimant asserted the following causes of action: wrongful termination and breach of contract.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: unclean hands; failure to state a cause of action upon which relief can be granted; and failure to mitigate.

Respondent asserted the following causes of action in its Counterclaim: breach of promissory note and failure to return excess compensation.

Unless specifically admitted in his Answer to Respondent's Counterclaim, Claimant denied the allegations made in the Counterclaim.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$1,015,000.00
Attorney's Fees	unspecified
Other Costs	unspecified

Respondent requested that Claimant's Statement of Claim be Dismissed in its entirety, as well as:

Compensatory Damages	\$ 174,000.00
Attorney's Fees	\$unspecified
Other Costs	\$unspecified

Respondent also requested interest at 7.875 percent per annum on \$117,000.00 of the compensatory damages and at 5 percent per annum on the remaining \$57,000.00.

OTHER ISSUES CONSIDERED AND DECIDED

On August 25, 1999, the parties participated in Large and Complex Case Administrative Conference with NASD Dispute Resolution, Inc. staff. The parties did not agree to proceed with the case as a Large and Complex Case.

On July 26, 2000, the Panel heard oral argument on Respondent's Motion to Dismiss the Statement of Claim. By Order dated July 28, 2000, the Panel denied Respondent's Motion to Dismiss without prejudice to renewal at the hearing.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing briefs filed by both parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1. Respondent, Merrill, Lynch, Pierce, Fenner & Smith, Inc., shall pay to Claimant, Craig Larson, the amount of Two Hundred Eighty Two Thousand Dollars (\$282,000.00), representing an award of compensatory damages. Any claims for attorney's fees and pre-award interest are dismissed with prejudice.**
- 2. The Panel has determined that Claimant was wrongfully discharged. Respondent shall promptly prepare and file an amended Form U-5 so stating and furnish a copy to Claimant's counsel.**
- 3. The Panel dismisses Respondent's Counterclaim, in its entirety,**

with prejudice.

4. Any and all relief not specifically addressed herein, including punitive (treble) damages, is hereby denied with prejudice.

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
Counterclaim 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 event giving rise to the dispute. In this matter, the member firm is Merrill Lynch, Pierce, Fenner & Smith, Inc.

Member surcharge	= \$2,500
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$4,500

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions - single arbitrator x \$450	= \$ 900
- Pre-hearing conferences: August 8, 2000	1 session
August 11, 2000	1 session

One (1) Pre-hearing session - Panel x \$1,000	= \$ 1,000
Pre-hearing conference: January 4, 2000	1 session

Ten (10) Hearing sessions x \$1,000	= \$10,000
Hearing Dates: August 21, 2000	2 sessions
August 22, 2000	2 sessions
August 23, 2000	2 sessions
August 24, 2000	2 sessions
August 25, 2000	2 sessions

Total Forum Fees	= \$11,900
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The Panel has assessed one half of the Forum Fees solely to Claimant, Craig Larson, and one half solely to Respondent, Merrill Lynch.

Fee Summary

1. Claimant, Larson, be and hereby is solely liable for:	
Initial Filing Fee	= \$ 500
Forum Fees	= \$ 5,950
Total Fees	= \$ 6,450
Less payments	= \$ 800
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,650
2. Respondent, Merrill Lynch, be and hereby is solely liable for:	
Counterclaim Filing Fee	= \$ 500
Member Fees	= \$ 2,500
Pre-Hearing Process Fees	= \$ 600
Hearing Process Fees	= \$ 4,500
Forum Fees	= \$ 5,950
Total Fees	= \$14,050
Less payments	= \$ 8,850
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,200

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signature(s)

William H. Levit, Jr.
William H. Levit, Jr., Esq.
Public Arbitrator, Presiding Chair

November 6, 2000
Signature Date

Thomas F. Mahoney
Thomas F. Mahoney, Esq.
Public Arbitrator

November 7, 2000
Signature Date

James R. Schoenike
James R. Schoenike
Industry Arbitrator

November 13, 2000
Signature Date

November 14, 2000
Date of Service (For NASD office use only)

NASD-DR Award

Craig Larson vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.

Arbitration # 98-04958

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William H. Levit, Jr., Esq.
Public Arbitrator, Presiding Chair

11-6-00
Signature Date

Thomas F. Mahoney, Esq.
Public Arbitrator

Signature Date

James R. Schoenike
Industry Arbitrator

Signature Date

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Public Arbitrator, Presiding Chair

Signature Date

Thomas F. Mahoney
Thomas F. Mahoney, Esq.
Public Arbitrator

7 NOV 2000
Signature Date

James R. Schoenike
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD-DR Award

Craig Larson vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.

Arbitration # 98-04938

Page 4 of 4

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Public Arbitrator, Presiding Chair

Signature Date

Thomas F. Mahoney, Esq.
Public Arbitrator

Signature Date

- 
James R. Schoenike
Industry Arbitrator

11/13/00

Signature Date

Date of Service (For NASD office use only)