

---

**Award**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Name of the Claimants/Counter-Respondents

Kenneth Lepori and  
Randall Hammond

Case Number: 00-04452

Name of the Respondent/Counterclaimant

Merrill Lynch, Pierce, Fenner, & Smith, Inc.

Hearing Site: Houston, Texas

---

**REPRESENTATION OF PARTIES**

Claimants/Counter-Respondents Kenneth Lepori ("Lepori") and Randall Hammond ("Hammond"), hereinafter collectively referred to as "Claimants/Counter-Respondents": Dennis A. McQueen, Esq., of Pagel, Davis & Hill, P.C., located in Houston, Texas.

Respondents/Counterclaimants, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"): Sandra Torget, Esq., Rubin & Associates, P.C. located in Houston Texas.

**CASE INFORMATION**

Statement of Claim filed: September 6, 2000.

Claimant/Counter-Respondent Lepori signed the Uniform Submission Agreement: October 25, 2000.

Claimant/Counter-Respondent, Hammond signed the Uniform Submission Agreement: October 26, 2000.

Statement of Answer filed by Respondent/Counterclaimant Merrill Lynch on or about: March 7, 2001.

Respondent did not sign a Uniform Submission Agreement.

Claimants/Counter-Respondents filed a Joint Answer to Respondent/Counterclaimants' Statement of Counter-Claim on or about December 30, 2001.

**CASE SUMMARY**

Claimants/Counter-Respondents asserted the following causes of action: breach of contract; unjust enrichment; fraud; and, detrimental reliance. These causes of action relate to Merrill Lynch's alleged refusal to compensate Claimants/Counter-Respondents for duties performed as sales managers for Merrill Lynch, also mentor compensation for Kenneth Lepori.

Unless specifically admitted in its Answer, Respondent/Counterclaimant denied the allegations made in the Statement of Claim and asserted as a defense that employees must be working for Merrill Lynch at the time that bonuses are distributed and Claimants/Counter-Respondents were not working for Merrill Lynch at the time of the bonus distribution. Conversely, they were working for a competitor, allegedly diverting Merrill Lynch clients for nearly three months prior to the bonus distribution period.

Respondent/Counterclaimant Merrill Lynch filed a Counterclaim in which they alleged abuse of process and malicious prosecution.

Claimants/Counter-Respondents filed a joint response to the Counterclaim in which they denied the allegations set forth therein and requested that all claims filed against them be dismissed.

### **RELIEF REQUESTED**

**Claimants/Counter-Respondent requested:**

Compensatory Damages	\$ 45,000.00 (Lepori)
Compensatory Damages	\$ 55,000.00 (Hammond)
Punitive Damages	\$ Unspecified
Interest	\$ Unspecified
Attorneys' Fees	\$ Unspecified
Other Costs	\$ Unspecified

**Respondent/Counterclaimant requested:**

Compensatory Damages	\$ 500,000.00
Punitive Damages	\$ Unspecified
Interest	\$ Unspecified
Attorneys' Fees	\$ Unspecified
Other Costs	\$ Unspecified
Non-Monetary Relief if any:	Dismissal of all claims

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

On or about December 14, 2000 Respondent/Counterclaimants moved the Panel to dismiss this action. On or about December 30, 2000 Claimants/Counter-Respondents opposed the motion to dismiss this action. At the time of the hearing on the merits, the panel denied Respondent/Counterclaimants' Motion to Dismiss.

On or about March 20, 2001 Merrill Lynch filed a motion for Summary Judgment. On or about June 10, 2001, Claimants/Counter-Respondents filed an opposition to the motion for Summary Judgment. At the time of the hearing on the merits, the Panel denied Merrill Lynch's Motion for Summary Judgment.

Respondent/Counterclaimant Merrill Lynch did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and

having answered the claim, appeared and testified at the hearing is bound by the determination of the Panel on all issues submitted.

### AWARD

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

1. Claimant/Counter-Respondent Kenneth Lepori's Claim against Respondent/Counterclaimant Merrill Lynch, Pierce, Fenner & Smith Inc., is denied in its entirety;
2. Claimant/Counter-Respondent Randall Hammond's Claim against Respondent/Counterclaimant Merrill Lynch, Pierce, Fenner & Smith, Inc., is denied in its entirety;
3. Claimants/Counter-Respondents Randall Hammond and Kenneth Lepori are jointly and severally liable for and shall pay to Respondent/Counterclaimant Merrill Lynch, Pierce, Fenner & Smith, Inc., the sum of \$20,000.00 in compensatory damages under the Counterclaim. Interest shall begin to accrue on this Award at a rate of 10% per annum on November 9, 1999 and shall cease to accrue when the Award is paid in full;
4. Claimants/Counter-Respondents Kenneth Lepori and Randall Hammond are jointly and severally liable for and shall pay to Respondent/Counterclaimant Merrill Lynch, Pierce, Fenner & Smith, Inc., attorneys' fees in the amount of \$30,000.00. The authority for the Award of attorneys' fees is based upon the pleadings on file herein, the representations of the parties, and Texas State statute;
5. Claimants/Counter-Respondents Kenneth Lepori and Randall Hammond are jointly and severally liable for and shall pay to Respondent/Counterclaimant Merrill Lynch, Pierce, Fenner & Smith, Inc. costs in the amount of \$5,500.00;
6. Claimants Kenneth Lepori and Randall Hammond are jointly and severally liable for the reimbursement of Respondent/Counterclaimant Merrill Lynch, Pierce, Fenner & Smith, Inc., \$1,000.00 in filing fees;
7. Any and all relief not specifically addressed herein, including punitive damages, is denied; and,
8. Any and all costs not specifically enumerated herein shall be paid by the party who incurred them.

### FEES

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

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

Initial claim filing fee	= \$ 225.00
Counter claim	= \$1000.00

**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 persons at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch is a member and the following member fees are assessed:

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: July 27, 2001      1 session	
Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates:      September 18, 2002    2 sessions	
September 19, 2002    2 sessions	
<b>Total Forum Fees</b>	<b>= \$5,625.00</b>

The Panel has assessed \$5,625.00 of the forum fees to Claimants Kenneth Lepori and Randall Hammond jointly and severally.

**FEE SUMMARY**

1. Claimants/ Counter-Respondents Lepori and Hammond are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 5,625.00
Total Fees	= \$ 5,850.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 4,875.00

2. Respondent/Counterclaimant Merrill Lynch is solely liable for:

Filing Fee	= \$ 1,000.00
Member Fees	= \$ 4,100.00
Total Fees	= \$ 5,100.00

<u>Less payments</u>	<u>= \$ 6,725.00</u>
Balance Refunded by NASD Dispute Resolution	= \$ 1,625.00

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

**ARBITRATION PANEL**

George A. Sellnau, Esq. - Public Arbitrator, Presiding Chairperson

James P. Hoefling - Public Arbitrator

Dolores Martin - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
George A. Sellnau, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
James P. Hoefling  
Public Arbitrator

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

\_\_\_\_\_  
Dolores Martin  
Non-Public Arbitrator

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

Date of Service (For NASD Dispute Resolution office use only) \_\_\_\_\_

11/18/02 MON 15:40 FAX

NASD REGULATION

008

NASD Dispute Resolution, Inc.  
Arbitration No. 00-04452  
Award Page 5 of 5

<u>Less payments</u>	<u>= \$ 6,725.00</u>
Balance Refunded by NASD Dispute Resolution	= \$ 1,625.00

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

ARBITRATION PANEL

George A. Sellnau, Esq. - Public Arbitrator, Presiding Chairperson  
James P. Hoefling - Public Arbitrator  
Dolores Martin - Non-Public Arbitrator

Concurring Arbitrators' Signatures

George A. Sellnau  
George A. Sellnau, Esq.  
Public Arbitrator, Presiding Chairperson

Nov. 18, 2002  
Signature Date

James P. Hoefling  
James P. Hoefling  
Public Arbitrator

Signature Date

Dolores Martin  
Dolores Martin  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only) \_\_\_\_\_

NASD Dispute Resolution, Inc.  
Arbitration No. 00-04452  
Award Page 5 of 5

<u>Less payments</u>	<u>= \$ 6,725.00</u>
Balance Refunded by NASD Dispute Resolution	= \$ 1,625.00

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

ARBITRATION PANEL

George A. Sellnau, Esq. - Public Arbitrator, Presiding Chairperson  
James P. Hoefling - Public Arbitrator  
Dolores Martin - Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
George A. Sellnau, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
James P. Hoefling  
Public Arbitrator

11-20-02  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Dolores Martin  
Non-Public Arbitrator

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

Date of Service (For NASD Dispute Resolution office use only) \_\_\_\_\_

NASD Dispute Resolution, Inc.  
Arbitration No. 00-04452  
Award Page 5 of 5

<u>Less payments</u>	<u>= \$ 6,725.00</u>
Balance Refunded by NASD Dispute Resolution	= \$ 1,625.00

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

**ARBITRATION PANEL**

George A. Sellnau, Esq. - Public Arbitrator, Presiding Chairperson  
Dolores Martin - Non-Public Arbitrator  
James P Hoefling - Public Arbitrator

**Concurring Arbitrators' Signatures**

George A. Sellnau, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

*Dolores Martin*

Dolores Martin  
Non-Public Arbitrator

11-15-02

Signature Date

James P. Hoefling  
Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only) \_\_\_\_\_