

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Merrill Lynch, Pierce, Fenner & Smith Inc., (Claimant) vs. Salomon Smith Barney, Inc. and William C. Moynihan, (Respondents)

Case Number: 01-00510

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant Merrill Lynch, Pierce, Fenner & Smith Inc., hereinafter referred to as "Claimant": Thomas J. Momjian, Esq., Rubin & Associates, P.C., Paoli, PA.

Respondent Salomon Smith Barney, Inc. ("Salomon"): Molly J. Tatman, Esq., Kasowitz, Benson, Torres & Friedman LLP, New York, NY.

Respondent William C. Moynihan ("Moynihan"): David N. Kittredge, Esq., Luboja & Thau, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 31, 2001.

Claimant signed the Uniform Submission Agreement: January 30, 2001.

Statement of Answer filed by Salomon on or about: February 12, 2001.

Salomon signed the Uniform Submission Agreement: February 12, 2001.

Statement of Answer filed by Moynihan on or about: February 9, 2001.

Moynihan did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: violation of contractual obligations; misappropriation and conversion of trade secrets and business property; breach of duty of loyalty and fiduciary duty; and unfair competition.

Unless specifically admitted in its Answer, Salomon denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to set out any wrongful conduct on the part of Salomon; Moynihan was not improperly lured away from Claimant, nor was any payment made to induce him to misappropriate proprietary documents; Moynihan's decision to leave Claimant's employ was related to numerous job-

related difficulties he encountered while employed by that firm; Salomon was not a party to any of the contractual agreements which Claimant seeks to enforce; and Salomon has conducted itself in accordance with the highest standards in the securities industry.

Unless specifically admitted in his Answer, Moynihan denied the allegations made in the Statement of Claim and asserted the following defenses: it was Moynihan's pre-existing relationships, and his own skills and hard work, not Claimant's "training", which enabled him to generate substantial commissions for Claimant; under the rules of the NASD, clients have every right to choose for themselves with whom they wish to do business; arbitration proceedings are not designed to permit a firm such as Claimant to unfairly punish individuals who wish to pursue careers elsewhere, or preclude public investors from doing business with the broker of their choice; Claimant's interests in persuading Moynihan's clients to remain with it have already been clearly protected; and Moynihan should be given the opportunity to compete on an equal footing for his own customers.

RELIEF REQUESTED

Claimant requested that the Panel issue a Permanent Injunction Order enjoining Moynihan, directly or indirectly, and whether alone or in concert with others, from:

- a. soliciting any business from any client of Claimant whom Moynihan served or whose name became known to him while in the employ of Claimant and, further, from accepting any business or account transfers from any of said clients whom Moynihan, or anyone acting on his behalf or in concert with him, has solicited at any time in the past for the purpose of doing business with Moynihan's new employer, Salomon (excluding Moynihan's family and relatives);
- b. using, disclosing, or transmitting for any purpose, including solicitation of said clients, the information contained in the records of Claimant, and that all original records and copies and/or other reproductions thereof, in whatever form, be returned to Claimant immediately; and
- c. any and all other such acts as this Panel deems appropriate for injunctive relief.

Claimant also requested compensatory damages against Moynihan and Salomon, and other relief to be specified at the hearing.

Salomon requested that the Statement of Claim be dismissed and that it be awarded its fees and costs in this proceeding.

Moynihan requested that the Stipulated Injunction in place be lifted, and that Claimant's claim for damages be denied.

OTHER ISSUES CONSIDERED AND DECIDED

Moynihan did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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. Salomon be and hereby is solely liable for and shall pay to Claimant the sum of \$45,000.00 as compensatory damages.
2. Moynihan be and hereby is solely liable for and shall pay to Claimant the sum of \$5,000.00 as compensatory damages.
3. The Stipulated Injunction entered into by Claimant and Moynihan on January 31, 2001 shall remain in effect until January 30, 2002.
4. All other requests for relief are hereby denied.

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 firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, Merrill Lynch, Pierce, Fenner & Smith Inc. and Salomon Smith Barney, Inc. are parties.

Merrill Lynch, Pierce, Fenner & Smith Inc.

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

Salomon Smith Barney, 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:

Six (6) Hearing sessions x \$1,000.00	= \$6,000.00
Hearing Dates:	
February 13, 2001	2 sessions
February 14, 2001	2 sessions
February 20, 2001	2 sessions
Total Forum Fees	= \$6,000.00

1. The Panel has assessed \$2,400.00 of the forum fees against Claimant.
2. The Panel has assessed \$2,400.00 of the forum fees against Salomon.
3. The Panel has assessed \$1,200.00 of the forum fees against Moynihan.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Moynihan, requested tapes, \$135.00.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$3,800.00
Injunctive Relief Fee	= \$2,500.00
<u>Forum Fees</u>	<u>= \$2,400.00</u>
Total Fees	= \$9,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$4,000.00

2. Salomon be and hereby is solely liable for:

Member Fees	= \$3,800.00
<u>Forum Fees</u>	<u>= \$2,400.00</u>
Total Fees	= \$6,200.00
<u>Less payments</u>	<u>= \$1,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$4,400.00

3. Moynihan be and hereby is solely liable for:

<u>Forum Fees</u>	<u>= \$1,200.00</u>
<u>Administrative Costs</u>	<u>= \$ 135.00</u>
Total Fees	= \$1,335.00
<u>Less payments</u>	<u>= \$ 135.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,200.00

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

NASD Dispute Resolution, Inc.
Arbitration No. 01-00510
Award Page 6

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.


John R. O'Hanlon, Esq.
Chairperson-Public Arbitrator

3-16-01
Signature Date

Lawrence D. McGovern
Public Arbitrator

Signature Date

Eugene R. Cochrane
Industry Arbitrator

Signature Date

March 16, 2001
Date of Service (For NASD office use only)

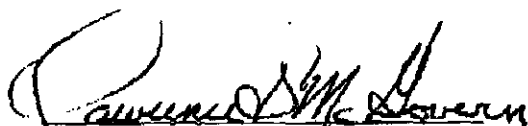
NASD Dispute Resolution, Inc.
Arbitration No. 01-00510
Award Page 7

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.

John R. O'Hanlon, Esq.
Chairperson-Public Arbitrator

Signature Date


Lawrence D. McGovern
Public Arbitrator

March 16, 2001
Signature Date

Eugene R. Cochrane
Industry Arbitrator

Signature Date

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NASD Dispute Resolution, Inc.
Arbitration No. 01-00510
Award Page 8

Concurring Arbitrators' Signatures

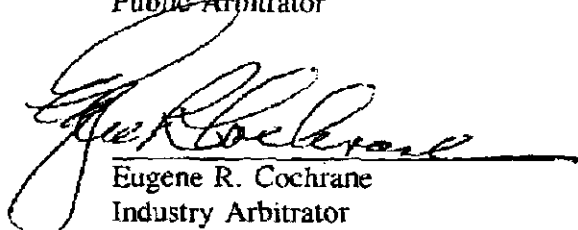
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John R. O'Hanlon, Esq.
Chairperson-Public Arbitrator

Signature Date

Lawrence D. McGovern
Public Arbitrator

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Industry Arbitrator


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