

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Merrill Lynch Pierce Fenner & Smith Inc.

and

01-02740  
Nashville, Tennessee

Name of Respondents

Linsco/Private Ledger Corp.  
Jonathan P. Bednar  
William R. Cagle

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Nature of the Dispute: Member vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Merrill Lynch Pierce Fenner & Smith Inc. ("**Claimant**") was represented by Susan M. Guerette, Esq. Rubin & Associates, P.C., Paoli, Pennsylvania.

Linsco/Private Ledger Corp. ("**Linsco**") was represented by Matthew V. Bartle, Esq., Berkowitz, Feldmiller, Stanton, Brandt, Kansas City, Missouri.

Jonathan P. Bednar ("**Bednar**") and William R. Cagle ("**Cagle**") were represented by Travis Graham, Esq., Paine, Tarwater, Bickers, and Tillman, Knoxville, Tennessee.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 24, 2001. The Amended Statement of Claim was filed on or about August 7, 2001. The Second Amended Statement of Claim was filed on or about December 16, 2003. The Third Amended Statement of Claim was filed on or about December 19, 2003. The Submission Agreement of Claimant Merrill Lynch Pierce Fenner & Smith Inc. was signed on or about June 5, 2001.

Respondent Linsco/Private Ledger Corp. did not file an Answer or a Submission Agreement.

Respondent William R. Cagle did not file an Answer. The Submission Agreement of Respondent William R. Cagle was signed on or about May 30, 2001.

Respondent Jonathan P. Bednar filed the Statement of Answer on or about January 12, 2004. The Submission Agreement of Respondent Jonathan P. Bednar was signed on or about April 7, 2003.

### **CASE SUMMARY**

Claimant filed a permanent injunction enjoining Respondents, from soliciting clients, and from using and disclosing customer information. The parties resolved the injunctive portion of this case on or about June 7, 2001. Claimant continued to pursue the claims against Respondents Cagle and Bednar.

Claimant alleged that William R. Cagle owes \$19,000.00 pursuant to the agreement to repay for costs of training.

Claimant Merrill Lynch Pierce Fenner & Smith Inc. alleged, among other things, non-payment of a Promissory Note, entered between Claimant Merrill Lynch Pierce Fenner & Smith Inc. and Respondent Jonathan P. Bednar in the amount of \$600,000.00 in the form of a forgivable loan.

Respondent Jonathan P. Bednar denied the allegations set forth in the Statement of Claim. Respondent Jonathan P. Bednar specifically stated:

Bednar continued to work for Merrill Lynch, doing his best to serve his clients and living off of that portion of the \$600,000.00 loan which remained after an unsuccessful stock venture. He managed to stay with Merrill Lynch long enough to achieve repayment of almost \$200,000.00 of the loan. Finally, however, he was forced to try to begin a new career as an independent broker. He left Merrill Lynch in May 2001, and intended to take with him only the clients, contacts, and skills which he had brought to Merrill Lynch in the first place.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$441,424.82 due on the face of the Promissory Note, costs, attorney's fees, and any other relief the Panel deems just and equitable under the circumstances.

Respondent Jonathan P. Bednar requested that the claims asserted against him be denied in their entirety and that the Panel credit him for the profits earned by Claimant from his current and former clients.

### **OTHER ISSUES CONSIDERED & DECIDED**

Claimant dismissed Respondent Linsco/Private Ledger Corp. without prejudice on or about August 9, 2001.

Claimant dismissed Respondent William R. Cagle without prejudice on or about July 14, 2004.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### AWARD

After considering the Joint Motion of Merrill Lynch and Bednar for Entry of a Stipulated Arbitration Award, the Panel, without ruling on or rendering a decision as to the liability of either party, has decided to grant the parties' Motion to issue the following Award:

1. Bednar shall pay to Merrill Lynch the total sum of Two Hundred Eighty Thousand Dollars (\$280,000.00). Jonathan P. Bednar shall pay to Merrill Lynch, the amount of \$280,000.00 according to the following schedule:

\$8,333.33 to be paid on or before July 18, 2004;  
\$8,333.33 to be paid on or before October 18, 2004;  
\$8,333.33 to be paid on or before January 18, 2005;  
\$6,250 to be paid on or before April 18, 2005;  
\$6,250 to be paid on or before July 18, 2005;  
\$6,250 to be paid on or before October 18, 2005;  
\$6,250 to be paid on or before January 18, 2006;  
\$7,500 to be paid on or before April 18, 2006;  
\$7,500 to be paid on or before July 18, 2006;  
\$7,500 to be paid on or before October 18, 2006;  
\$7,500 to be paid on or before January 18, 2007,  
\$8,750 to be paid on or before April 18, 2007;  
\$8,750 to be paid on or before July 18, 2007;  
\$8,750 to be paid on or before October 18, 2007;  
\$8,750 to be paid on or before January 18, 2008;  
\$8,750 to be paid on or before April 18, 2008;  
\$8,750 to be paid on or before July 18, 2008;  
\$8,750 to be paid on or before October 18, 2008;  
\$8,750 to be paid on or before January 18, 2009;  
\$10,000 to be paid on or before April 18, 2009;  
\$10,000 to be paid on or before July 18, 2009;  
\$10,000 to be paid on or before October 18, 2009;  
\$10,000 to be paid on or before January 18, 2010;

\$11,250 to be paid on or before April 18, 2010;  
\$11,250 to be paid on or before July 18, 2010;  
\$11,250 to be paid on or before October 18, 2010;  
\$11,250 to be paid on or before January 18, 2011;  
\$11,250 to be paid on or before April 18, 2011;  
\$11,250 to be paid on or before July 18, 2011;  
\$11,250 to be paid on or before October 18, 2011;  
\$11,250 to be paid on or before January 18, 2012.

2. Checks in these amounts shall be made payable to "Merrill Lynch, Pierce, Fenner & Smith Incorporated," and transmitted to Rubin, Fortunato, Harbison and Dougherty, P.C., 10 South Leopard Road, Paoli, Pennsylvania 19301.
3. If Bednar shall fail to make any payment as set forth above within fifteen (15) days of its due date, then Merrill Lynch shall have the immediate right to proceed with execution, garnishment, or any other method to enforce this judgment. Prior to commencing enforcement proceedings, Merrill Lynch will send a written notice informing Bednar and his counsel of the default at the following addresses:

Jonathan P. Bednar  
122 Cayuga Dr.  
Loudon, Tennessee 37774

Travis Graham, Esquire  
Paine, Tarwater, Bickers, and Tillman LLP  
1100 First Tennessee Plaza, 800 South Gay Street,  
Knoxville, Tennessee 37902

4. The parties agree that the prevailing party in any action to enforce the terms of this Award will be entitled to have its reasonable attorneys' fees paid by the non-prevailing party.
5. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

#### **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 = \$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 persons at the time of the events giving rise to the dispute. In this matter, the member firms are Merrill Lynch Pierce Fenner & Smith Inc. and Linsco/Private Ledger Corp.

Merrill Lynch Pierce Fenner & Smith Inc.

Member surcharge	\$	1,200.00
Pre-hearing process fee	\$	600.00
Hearing process fee	\$	<u>2,200.00</u>
Total Member Fees	\$	4,000.00

Linsco/Private Ledger Corp.

Member surcharge	\$	<u>1,200.00</u>
Total Member Fees	\$	1,200.00

**Adjournment Fees**

Adjournments requested during these proceedings:

May 11-12, 2004 Hearing Dates, adjournment by Merrill Lynch Pierce Fenner & Smith Inc.  
(waived by the Panel) = \$1,125.00

**Forum Fees and Assessments**

The Arbitration 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:

3 Pre-hearing sessions with Panel	x	1,125.00	\$	3,375.00
August 28, 2001	1	Session		
September 15, 2003	1	Session		

December 4, 2003 1 Session  
Total Forum Fees \$ 3,375.00

The Arbitration Panel has assessed \$2,250.00 of the forum fees to Merrill Lynch Pierce Fenner & Smith Inc.

The Arbitration Panel has assessed \$1,125.00 of the forum fees jointly and severally to Jonathan P. Bednar and William R. Cagle.

**Fee Summary**

Claimant, Merrill Lynch Pierce Fenner & Smith Inc., shall be and hereby is liable for:

Initial Filing Fee	= \$	500.00
Member Fees	= \$	4,000.00
Injunctive Fee	= \$	2,500.00
<u>Forum Fees</u>	= \$	<u>2,250.00</u>
Total Fees	= \$	9,250.00
<u>Less payments</u>	= \$	<u>-8,725.00</u>
Balance Due NASD Dispute Resolution	= \$	525.00

Respondent, Linsco/Private Ledger Corp., shall be and hereby is liable for:

<u>Member Fees</u>	= \$	<u>1,200.00</u>
Total Fees	= \$	1,200.00
<u>Less payments</u>	= \$	<u>-0.00</u>
Balance Due NASD Dispute Resolution	= \$	1,200.00

Respondents, Jonathan P. Bednar and William R. Cagle, jointly and severally, shall be and hereby are liable for:

<u>Forum Fees</u>	= \$	<u>1,125.00</u>
Total Fees	= \$	1,125.00
<u>Less payments</u>	= \$	<u>-0.00</u>
Balance Due NASD Dispute Resolution	= \$	1,125.00

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

**ARBITRATION PANEL**

David N. Burn, Esq. - Public Arbitrator, Presiding Chair  
Barbara M. Reid, Ph.D - Public Arbitrator  
Richard L. Oates - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ David N. Burn, Esq.  
David N. Burn, Esq.  
Public Arbitrator, Presiding Chair

07/26/04  
Signature Date

/s/ Barbara M. Reid, Ph.D  
Barbara M. Reid, Ph.D  
Public Arbitrator

07/16/04  
Signature Date

/s/ Richard L. Oates  
Richard L. Oates  
Non-Public Arbitrator


07/20/04  
Signature Date

0727/04  
Date of service

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David N. Burn, Esq. - Public Arbitrator, Presiding Chair  
Barbara M. Reid, Ph.D - Public Arbitrator  
Richard L. Oates - Non-Public Arbitrator

Concurring Arbitrators:

  
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David N. Burn, Esq.  
Public Arbitrator, Presiding Chair

7/26/04  
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Signature Date

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Barbara M. Reid, Ph.D  
Public Arbitrator

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Richard L. Oates  
Non-Public Arbitrator

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Barbara M. Reid, Ph.D - Public Arbitrator  
Richard L. Oates - Non-Public Arbitrator

**Concurring Arbitrators:**

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David N. Burn, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

*Barbara M. Reid*  
Barbara M. Reid, Ph.D  
Public Arbitrator

*7/15/04*  
Signature Date

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Richard L. Oates  
Non-Public Arbitrator

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Signature Date

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Date of service

**ARBITRATION PANEL**

David N. Burn, Esq. - Public Arbitrator, Presiding Chair  
Barbara M. Reid, Ph.D - Public Arbitrator  
Richard L. Oates - Non-Public Arbitrator

**Concurring Arbitrators:**

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Public Arbitrator, Presiding Chair

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Signature Date

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Barbara M. Reid, Ph.D  
Public Arbitrator

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

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*R. L. Oates*  
Richard L. Oates  
Non-Public Arbitrator

\_\_\_\_\_  
*7/20/04*  
Signature Date

\_\_\_\_\_  
Date of service