

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Scott W. Crispin

Case Number: 02-1282

Name of the Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Charlotte, NC

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**REPRESENTATION OF PARTIES**

Claimant, Scott Crispin ("Crispin"), hereinafter referred to as "Claimant", was represented by John R. Buric, Esq. and Preston O. Odom, III, Esq., James, McElroy & Diehl, P.A., Charlotte, North Carolina.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), hereinafter referred to as "Respondent", was represented by Aaron W. Lipson, Esq. And G. Wayne Hillis, Jr., Esq., Parker, Hudson, Rainer & Dobbs LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on March 4, 2002.

Claimant signed the Uniform Submission Agreement on February 27, 2002.

Statement of Answer filed by Respondent on May 6, 2002.

Margaret L. Watson, a representative of Respondent signed the Uniform Submission Agreement on May 6, 2002.

Motion to Dismiss filed by Respondent on May 6, 2002.

Response to Motion to Dismiss filed by Claimant on October 18, 2002.

Reply in Support of Motion to Dismiss filed by Respondent on October 31, 2002.

Surreply to Motion to Dismiss filed by Claimant on November 18, 2002.

Motion for Clarification, or in the Alternative, for Partial Reconsideration of the Motion to Dismiss filed by Respondent on December 18, 2002.

Response thereto was filed by Claimant on January 6, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: estoppel; statutory claim for benefits; statutory clarification of rights; breach of fiduciary duty; statutory attorneys' fees; breach of contract; fraudulent misrepresentation; and, violation of North Carolina Wage and Hour Act. The causes of action relate to an alleged early retirement agreement between Claimant and Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim; waiver; laches; estoppel; failure of consideration; failure to satisfy conditions precedent; payment; preemption by ERISA; statute of frauds; statute of limitations; and, failure to mitigate damages.

### **RELIEF REQUESTED**

Claimant requested:

|                      |                    |
|----------------------|--------------------|
| Compensatory Damages | \$ 557,064.00      |
| Punitive Damages     | \$ 425,000.00      |
| Interest             | 8% per annum       |
| Attorneys' Fees      | amount unspecified |
| Other Costs          | amount unspecified |

Additionally, Claimant requested an award finding that Respondent was estopped from denying Claimant medical insurance and ordering Respondent to specifically perform its agreement to provide Claimant medical insurance.

Respondent requested that the panel dismiss all claims and award Respondent its costs.

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

On December 10, 2002, the Panel granted in part and denied in part Respondent's Motion to Dismiss. The Panel denied the motion as to Claimant's claims for breach of contract and fraudulent misrepresentation and granted the motion as to all other claims.

Respondent's Motion for Clarification, or in the Alternative, for Partial Reconsideration of the Motion to Dismiss was denied.

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. Claimant's remaining claims, breach of contract and fraudulent misrepresentation, are denied in their entirety;
2. The parties shall bear their respective costs, except as to Fees specifically addressed below; and,
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

**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 = \$ 375.00

**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. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge = \$ 2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 4,000.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 with Panel @ \$ 1,200.00 = \$ 2,400.00

|                          |                    |           |
|--------------------------|--------------------|-----------|
| Pre-hearing conferences: | September 19, 2002 | 1 session |
|                          | November 25, 2002  | 1 session |

Five (5) Hearing sessions @ \$ 1,200.00 = \$ 6,000.00

|                |                  |            |
|----------------|------------------|------------|
| Hearing Dates: | January 27, 2003 | 2 sessions |
|                | January 28, 2003 | 2 sessions |
|                | January 29, 2003 | 1 session  |

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Total Forum Fees = \$ 8,400.00

1. The Panel has assessed \$ 8,400.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is assessed:

Initial Filing Fee = \$ 375.00

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Total Fees = \$ 375.00

Less payments = \$ 1,575.00

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Refund Due Claimant = \$ 1,200.00

2. Respondent is assessed:

Member Fees = \$ 7,000.00

Forum Fees = \$ 8,400.00

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Total Fees = \$ 15,400.00

Less payments = \$ 7,000.00

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Balance Due NASD Dispute Resolution = \$ 8,400.00

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

**ARBITRATION PANEL**

Stephen P. Hoffman, Esq.

- Public Arbitrator, Chairperson

John H. Griffing

- Public Arbitrator, Panelist

Louis M. Davis

- Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Stephen P. Hoffman, Esq.  
Public Arbitrator, Presiding Chairperson

3/12/03  
Signature Date

John H. Griffing  
Public Arbitrator, Panelist

Signature Date

Louis M. Davis  
Non-Public Arbitrator, Panelist

Signature Date

March 12, 2003

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

**Concurring Arbitrators' Signatures**

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Stephen P. Hoffman, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
John H. Griffing  
Public Arbitrator, Panelist

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Signature Date

March 12, 2003  
Louis M. Davis  
Non-Public Arbitrator, Panelist

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