

**Award  
NASD**

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In the Matter of the Arbitration Between:

Name of the Claimant

Merrill Lynch Pierce Fenner & Smith Inc.

Case Number: 02-06479

Names of the Respondents

Salomon Smith Barney Inc.  
Roger L. O'Quin, Jr.

Hearing Site: Little Rock, AR

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**REPRESENTATION OF PARTIES**

For Merrill Lynch Pierce Fenner & Smith Inc. ("MLPFS"), hereinafter referred to as "Claimant": Timothy S. Cole, Esq., Rubin & Associates, P.C., Paoli, PA.

For Salomon Smith Barney Inc. ("SSB"): Dina S. Vinero, Divisional Counsel and Senior Vice-President, SSB, Atlanta, GA.

For Roger L. O'Quin, Jr.: Kristine G. Baker, Esq., Quattlebaum, Grooms, Tull & Burrow PLLC, Little Rock, AR.

**CASE INFORMATION**

Statement of Claim filed on or about: October 29, 2002.

Claimant signed the Uniform Submission Agreement: October 28, 2002.

Statement of Answer filed by Respondent SSB on or about: December 12, 2002.

Respondent SSB signed the Uniform Submission Agreement: November 26, 2002.

Statement of Answer filed by Respondent O'Quin on or about: December 12, 2002.

Respondent O'Quin signed the Uniform Submission Agreement: December 1, 2002.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of his Financial Consultant Agreement; breach of duty of loyalty; misappropriation and conversion of trade secrets and business property; unfair competition; and, interference with contractual relations. The causes of action relate to Respondent O'Quin's resignation from Claimant and his subsequent employment with Respondent SSB.

Unless specifically admitted in their Answers, Respondents SSB and O'Quin denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested a permanent injunctive order enjoining Respondents, the return of Claimant's records, documents and information, damages appropriate under the Arkansas Uniform Trade Secrets Act, Ark. Code sections 4-75-601 et seq., and all other relief the Panel deemed appropriate.

Respondents SSB and O'Quin requested dismissal of the Statement of Claim.

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

On or about November 19, 2002, Claimant filed with NASD a copy of the November 19, 2002 Order of the United States District Court for the Eastern District of Arkansas granting Claimant's motion for preliminary injunction.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

The Order of the United States District Court for the Eastern District of Arkansas, Western Division in the case of Merrill Lynch, Pierce, Fenner & Smith Incorporated vs. Roger L. O'Quin, Jr., Case No. 4:02CV00678GH dated November 19, 2002, is dissolved. The Respondent, Roger L. O'Quin, Jr. is hereby permanently enjoined from using, disclosing or transmitting for any purpose, that information contained in the records of Merrill Lynch which he wrongfully and unlawfully removed from the offices of said Merrill Lynch on or about October 25, 2002, and which records he has returned to said Merrill Lynch. Nothing in this injunction shall prohibit Respondent O'Quin from doing business with any customers or clients he previously served while in the employment of Merrill Lynch.

All claims against Respondent SSB are denied, with prejudice.

Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD 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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firms are parties.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$750.00

Hearing process fee = \$2,200.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournment were filed in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

1. Claimant MLPFS is assessed:

Injunctive relief surcharge = \$2,500.00  
Additional arbitrator honoraria = \$312.50

2. Respondents SSB and O'Quin are jointly and severally assessed:

Additional arbitrator honoraria = \$312.50

**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) Hearing sessions @ \$1,000.00 = \$2,000.00  
Hearing Date: December 4, 2002 2 sessions

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Total Forum Fees = \$2,000.00

The Panel has assessed \$1,000.00 of the forum fees to Claimant.

The Panel has assessed \$1,000.00 of the forum fees jointly and severally to Respondents SSB and O'Quin.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**FEE SUMMARY**

Claimant is solely liable for:

Initial Filing Fee	= \$500.00
Member Fees	= \$4,450.00
Injunctive Relief Fees	= \$2,500.00
Forum Fees	= \$1,000.00
Additional Arbitrator Honoraria	= \$312.50

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Total Fees	= \$8,762.50
Less payments	= \$8,450.00

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Balance Due NASD	= \$312.50
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Respondent SSB is solely liable for:

Member Fees	= \$4,450.00
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Total Fees	= \$4,450.00
Less payments	= \$2,250.00

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Balance Due NASD	= \$2,200.00
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Respondents SSB and O'Quin are jointly and severally liable for:

Forum Fees	= \$1,000.00
Additional Arbitrator Honoraria	= \$312.50

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Total Fees	= \$1,312.50
Less payments	= \$0.00

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Balance Due NASD	= \$1,312.50
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All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Robert E. Homberger, Esq.	-	Public Arbitrator, Presiding Chair
Eric Spencer Buchanan, Esq.	-	Public Arbitrator
Rudy A. Martin, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

\_\_\_\_\_  
Robert E. Hornberger, Esq.  
Public Arbitrator, Presiding Chair

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

/s/

\_\_\_\_\_  
Eric Spencer Buchanan, Esq.  
Public Arbitrator

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

/s/

\_\_\_\_\_  
Rudy A. Martin, Jr.  
Non-Public Arbitrator

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


December 23, 2002

Date of Service (For NASD office use only)

Dec-23-2002 2:39PM NASD  
Arbitration No. 02-06479  
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Concurring Arbitrators' Signatures

  
Robert E. Hornberger, Esq.  
Public Arbitrator, Presiding Chair

12/23/02  
Signature Date

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Eric Spencer Buchanan, Esq.  
Public Arbitrator

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

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Rudy A. Martin, Jr.  
Non-Public Arbitrator

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Signature Date

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Robert E. Hornberger, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

*Eric Spencer Buchanan*  
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Eric Spencer Buchanan, Esq.  
Public Arbitrator

*23 Dec 02*  
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Signature Date

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Rudy A. Martin, Jr.  
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