
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Ronald J. Kovack

Case Number: 02-07105

Name of the Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Associated Person vs. Member.

REPRESENTATION OF PARTIES

For Ronald J. Kovack, hereinafter referred to as "Claimant": Curtis Carlson, Esq., Payton & Carlson, P.A., Miami, Florida.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Michael J. Fortunato, Esq. and Carol B. Trask, Esq., Rubin & Associates, P.C., Paoli, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about: November 20, 2002.

Claimant signed the Uniform Submission Agreement: November 13, 2002.

Statement of Answer filed by Respondent on or about: January 31, 2003.

Respondent signed the Uniform Submission Agreement: January 21, 2003.

Motion to Dismiss filed by Respondent on or about: August 8, 2003.

Reply to Motion to Dismiss filed by Claimant on or about: September 5, 2003.

Reply Brief in Support of the Motion to Dismiss filed by Respondent on or about: September 12, 2003.

CASE SUMMARY

Claimant asserted the cause of action of defamation. The cause of action relates to Claimant's resignation and Respondent's subsequent filing of a Form U-5 with the NASD Central Registration Depository (the "CRD").

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$500,000.00, expungement of his Form U-5 from the NASD CRD, a requirement that Respondent file an amended U-5 stating that Claimant resigned voluntarily and costs.

Respondent requested that the Statement of Claim be dismissed in its entirety, that all costs be assessed against Claimant and other relief as the Panel deemed reasonable and appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel deferred ruling on Respondent's Motion to Dismiss until the evidentiary hearing in this matter.

At the commencement of the evidentiary hearing, Respondent renewed its Motion to Dismiss which asserted that the claim was time barred under the applicable statute of limitations. The Panel deferred ruling until the conclusion of the hearing. At the conclusion of the hearing, the Panel denied the motion.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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:

Respondent is found liable on the claim of defamation. Therefore, NASD CRD is directed to expunge the reason for termination and accompanying explanation reported on the Form U5 filed by Merrill Lynch with CRD in February 1985. The reason for termination as reported on the form was "permitted to resign" with the explanation "Mr. Kovack was permitted to resign because the manager lost confidence in his judgment". All references to this reason for termination and accompanying explanation should be expunged from Mr. Kovack's CRD record. NASD shall replace the reason for termination on the Merrill Lynch U5 with "voluntary", pursuant to Claimant's request to resign and submission of a letter of resignation. Furthermore, the Panel orders NASD CRD to expunge the "yes" answers to questions 13c and 14 on the Merrill Lynch U5 filing and replace with "no" answers, as the clients referred to in entry No. 13c were not Claimant's accounts and, as to No. 14, Respondent's legal department reported that no private placements were involved. In addition to changing the "yes" answers to "no", NASD CRD is further instructed to delete all references to the disclosure details that supported the "yes" answers that were reported on the Merrill Lynch U5 filing. Further, NASD is ordered to expunge all references to the Merrill Lynch termination reported by Mr. Kovack on any of his U4 filing submissions since the reason for termination from Merrill Lynch is now "voluntary" and does not trigger a Form U4 reporting requirement. In addition, NASD is also ordered to expunge any U4 responses submitted by Mr. Kovack regarding the disclosure events Merrill Lynch reported via questions 13c and 14 on the 1985 U5 filing as they were ordered expunged from the Merrill Lynch U5.

Respondent is found not liable for compensatory damages.

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

Initial claim filing fee = \$300.00

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, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Adjournment Fees

No requests for adjournments were filed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

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: May 28, 2003 1 session

Three (3) Hearing sessions @ \$1,125.00 = \$3,375.00

Hearing Dates: September 30, 2003 2 sessions

October 1, 2003 1 session

Total Forum Fees = \$4,500.00

The Panel has assessed \$2,250.00 of the forum fees to Claimant.

The Panel has assessed \$2,250.00 of the forum fees to Respondent.

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 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 during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 2,250.00</u>
Total Fees	= \$ 2,550.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,125.00

Respondent is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 2,250.00</u>
Total Fees	= \$ 7,450.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,250.00

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

ARBITRATION PANEL

<i>Robert S. Natiss</i>	-	<i>Non-Public Arbitrator, Presiding Chairperson</i>
<i>Ronald F. Rohe</i>	-	<i>Non-Public Arbitrator</i>
<i>Richard D. Hanson</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Robert S. Natiss
Non-Public Arbitrator, Presiding Chairperson

10/10/03
Signature Date

/s/
Ronald F. Rohe
Non-Public Arbitrator

10/10/03
Signature Date

/s/
Richard D. Hanson
Non-Public Arbitrator

10/10/03
Signature Date

10/10/03
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 02-07105
Award Page 4

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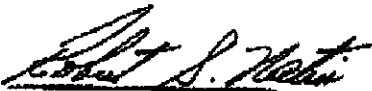
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Robert S. Natiss
Non-Public Arbitrator, Presiding Chairperson

Oct. 10, 2003
Signature Date

Ronald F. Rohe
Non-Public Arbitrator

Signature Date

Richard D. Hanson
Non-Public Arbitrator

Signature Date

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Non-Public Arbitrator, Presiding Chairperson

Signature Date


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Non-Public Arbitrator


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