

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
M. Christopher Alba

Case Number: 03-03199

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

Hearing Site: Washington, DC

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Claimant, M. Christopher Alba ("Claimant"), was represented by Michael Lapat, Esq., Attorney at Law, Coral Springs, Florida.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent"), was represented by Stephen E. Brown, Esq. and Stuart D. Roberts, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on April 28, 2003.

Claimant signed the Uniform Submission Agreement on April 28, 2003.

Claimant filed an Amended Statement of Claim on or about July 1, 2004.

Statement of Answer filed by Respondent on July 18, 2003.

A representative of Respondent executed the Uniform Submission Agreement on May 9, 2003.

Respondent filed a Motion to Dismiss on April 22, 2004.

Claimant filed an Answer to Motion to Dismiss and Motion for Leave to Withdraw and File First Amended Statement of Claim on or about May 28, 2004.

Respondent filed an Answer to Motion to File First Amended Statement of Claim on June 14, 2004.

Respondent filed a Renewed Motion to Dismiss on July 14, 2004.

Claimant filed an Answer to Respondent's Renewed Motion to Dismiss on July 20, 2004.

Respondent filed a Motion to Reconsider Panel's Ruling on Renewed Motion to Dismiss Based on New Federal Decision on August 27, 2004.

Claimant filed an Answer to Motion to Reconsider Panel's Ruling on Renewed Motion to Dismiss Based on New Federal Decision on November 12, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: interference with business

relation; breach of covenant of good faith; unjust enrichment; *quantum meruit*; and common law libel and slander. The causes of action relate to Claimant's employment with Respondent. In his Amended Statement of Claim Claimant withdrew Counts I, II, III and IV of the Statement of Claim.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant fails to state a claim upon which relief can be granted; Claimant's claims are barred by the doctrines of laches, waiver, ratification, acquiescence and/or estoppel, employment-at-will and unclean hands; and failure to mitigate damages.

#### RELIEF REQUESTED

Claimant in his Amended Statement of Claim requested:

Compensatory Damages	\$505,280.00
Punitive Damages	\$250,000.00
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

#### OTHER ISSUES CONSIDERED AND DECIDED

By Order dated August 5, 2004, the Arbitration Panel (the "Panel") denied Respondent's Renewed Motion to Dismiss.

On or about November 29, 2004, the Panel denied Respondent's Motion to Reconsider Panel's Ruling on Renewed Motion to Dismiss Based on New Federal Decision on August 27, 2004.

At the conclusion of Claimant's case in chief during the hearing on the merits, Respondent moved the Panel to dismiss the Statement of Claim.

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 Amended Statement of Claim is dismissed with prejudice.
2. All claims for punitive damages and attorney's fees are denied in their entirety
3. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and

4. Any and all relief not specifically addressed herein is denied in its entirety.

#### 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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch is a party.

Member surcharge = \$ 2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 4,000.00

Total Member Fees = \$ 7,000.00

##### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 18-21, 2004 adjournment by Respondent = \$ 1,200.00

##### 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: February 10, 2004 1 session  
June 30, 2004 1 session

Four (4) Hearing sessions @ \$1,200.00 = \$ 4,800.00

Hearing Dates: December 13, 2004 2 sessions  
December 14, 2004 2 sessions

Total Forum Fees = \$ 7,200.00

1. The Panel has assessed \$3,600.00 of the forum fees to Claimant.
2. The Panel has assessed \$3,600.00 of the forum fees to Respondent.

#### FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$ 3,600.00</u>
Total Fees	= \$ 3,975.00
<u>Less payments</u>	<u>= \$ 2,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,400.00

2. Respondent is assessed and shall pay the following fees:

Member Fees	= \$ 7,000.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	<u>= \$ 3,600.00</u>
Total Fees	= \$11,800.00
<u>Less payments</u>	<u>= \$ 8,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,600.00

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

ARBITRATION PANEL

Jane C. Carney, CPA	- Public Arbitrator, Presiding Chairperson
Joyce A. Mitchell, Esq.	- Public Arbitrator, Panelist
Joan M. Confoy	- Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures

Jane C. Carney  
Jane C. Carney, CPA  
Public Arbitrator, Presiding Chairperson

12/24/2004  
Signature Date

Joyce A. Mitchell, Esq.  
Joyce A. Mitchell, Esq.  
Public Arbitrator, Panelist

Signature Date

Joan M. Conboy  
Joan M. Conboy  
Non-Public Arbitrator, Panelist

Signature Date

12/28/04  
Date of Service (For NASD Dispute Resolution office use only)

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Concurring Arbitrators' Signatures

Jane C. Carney, CPA  
Public Arbitrator, Presiding Chairperson

Signature Date

  
Joyce A. Mitchell, Esq.  
Public Arbitrator, Panelist

12/23/04  
Signature Date

Joan M. Conboy  
Non-Public Arbitrator, Panelist

Signature Date

12/28/04  
Date of Service (For NASD Dispute Resolution office use only)

12/23/2004 11:18 FAX 202 728 8082

NASD DISPUTE RESOLUTION

007/013

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Jane C. Carney, CPA  
Public Arbitrator, Presiding Chairperson

Signature Date

Joyce A. Mitchell, Esq.  
Public Arbitrator, Panelist

Signature Date

Joan M. Conboy  
Non-Public Arbitrator, Panelist

12/23/04  
Signature Date

12/28/04  
Date of Service (For NASD Dispute Resolution office use only)