
Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Merrill Lynch, Pierce, Fenner &
Smith, Incorporated

Case Number: 03-03212

Name of the Respondent
Jeffrey D. Windes

Hearing Site: New Orleans, Louisiana

Nature of the Dispute: Member vs. Associated Person.

REPRESENTATION OF PARTIES

For Merrill Lynch, Pierce, Fenner & Smith, Incorporated, hereinafter referred to as "Claimant":
Patricia A. Bailey, Esq., Rubin, Fortunato, Harbison & Dougherty, P.C., Paoli, Pennsylvania.

For Jeffrey D. Windes, hereinafter referred to as "Respondent": Ruthann G. Niosi, Esq., Law
Offices of Ruthann G. Niosi, P.C., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: May 1, 2003.

Claimant signed the Uniform Submission Agreement: May 1, 2003.

Statement of Answer With Counterclaim filed by Respondent on or about: September 2, 2003.

Reply to Respondent's Counterclaim filed by Claimant on or about: October 2, 2003.

Motion for Summary Judgment filed by Claimant on or about: March 1, 2004.

Response to Motion for Summary Judgment filed by Respondent on or about: March 16, 2004.

Reply in Support of its Motion for Summary Judgment filed by Claimant on or about: March 24,
2004.

Response to Claimant's Reply in Support of its Motion for Summary Judgment filed by
Respondent on or about: March 26, 2004.

Respondent did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the causes of action of breach of contract and unjust enrichment. The causes of action relate to the Promissory Note and Agreement dated November 15, 2000 entered into between the parties in connection with Respondent's former employment with Claimant. In addition, unless specifically admitted in its Answer, Claimant denied the allegations made in the Counterclaim and asserted various defenses.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim, asserted various defenses and asserted the following causes of action in his

Counterclaim: termination of employment without just cause; breach of contract; promissory estoppel; fraudulent misrepresentation; negligent misrepresentation; and, wages due.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$106,633.10, plus interest at the rate of 7.125% per annum, costs, attorney's fees and dismissal of Respondent's counterclaim.

Respondent requested dismissal of Claimant's claim. In addition, Respondent requested the following relief in his counterclaim: an unspecified amount of compensatory damages; all incentive and deferred compensation identified in his employment documents with Claimant; wages due under any applicable state labor law statutes; costs; and, any other relief deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim and appeared at the hearing, is bound by the determinations of the Panel on all issues submitted.

On or about April 20, 2004, the Panel issued an order which denied Claimant's Motion for Summary Judgment.

During the evidentiary hearing on May 10, 2004, the parties notified the Panel that this matter had been settled. In addition, the parties requested the entry of a Stipulated Award.

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

AWARD

After considering the pleadings, the Stipulated Agreement and the record in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

This Award is made pursuant to the terms of a Stipulated Agreement between the parties, which Stipulated Agreement is subject to a confidentiality clause.

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	= \$1,000.00
Counterclaim filing fee	= \$ 250.00

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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 event giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments 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.

No injunctive relief fees were incurred in this matter.

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:

Two (2) Pre-hearing sessions with the Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences: November 20, 2003	1 session
April 20, 2004	1 session
One (1) Hearing session @ \$1,125.00	= \$1,125.00
Hearing Date: May 10, 2004	1 session
Total Forum Fees	= \$3,375.00

Pursuant to the agreement of the parties, the Panel has assessed \$1,687.50 of the forum fees to Claimant and \$1,687.50 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 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	= \$ 1,000.00
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 1,687.50</u>
Total Fees	= \$ 7,887.50
<u>Less payments</u>	<u>= \$ 7,325.00</u>
Balance Due NASD Dispute Resolution	= \$ 562.50

Respondent is solely liable for:

Counterclaim Filing Fee	= \$ 250.00
<u>Forum Fees</u>	<u>= \$ 1,687.50</u>
Total Fees	= \$ 1,937.50
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,937.50

Pursuant to the order of the Panel, Respondent's fees shall be paid at the rate of \$100.00 per month commencing on July 1, 2004 until paid. Claimant's fees are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Kenneth A. Goodwin, Esq.	-	Public Arbitrator, Presiding Chairperson
Larry M. Roedel, Esq.	-	Public Arbitrator
David Hamilton Ramsey	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/	05/24/04
<u>Kenneth A. Goodwin, Esq.</u> Public Arbitrator, Presiding Chairperson	<u>Signature Date</u>
/s/	05/25/04
<u>Larry M. Roedel, Esq.</u> Public Arbitrator	<u>Signature Date</u>
/s/	05/25/04
<u>David Hamilton Ramsey</u> Non-Public Arbitrator 05/26/04	<u>Signature Date</u>

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

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Larry M. Roedel, Esq.	-	Public Arbitrator
David Hamilton Ramsey	-	Non-Public Arbitrator

Consenting Arbitrators' Signatures


Kenneth A. Goodwin, Esq.
Public Arbitrator, Presiding Chairperson

5-24-04
Signature Date

Larry M. Roedel, Esq.
Public Arbitrator

Signature Date


David Hamilton Ramsey
Non-Public Arbitrator

5-25-04
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David Hamilton Ramsey	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Kenneth A. Goodwin, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Larry M. Roedel, Esq.
Public Arbitrator

5-25-04
Signature Date

David Hamilton Ramsey
Non-Public Arbitrator

Signature Date

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