

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-00925

John Buchanan

Name of the Respondent

Hearing Site: Richmond, Virginia

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Claimant, John Buchanan, hereinafter referred to as "Claimant", was represented by David R. Simonsen, Jr., Esq., Richmond, Virginia.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent", was represented by Stuart D. Roberts, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on February 11, 2004.

Claimant signed the Uniform Submission Agreement on February 1, 2004.

Claimant's Reply to Respondent's Counterclaim was filed on May 14, 2004.

Statement of Answer and Counterclaim filed by Respondent on April 30, 2004.

A representative of Respondent executed the Uniform Submission Agreement on June 10, 2004.

CASE SUMMARY

Claimant asserted a cause of action for defamation relating the comments on Claimant's U-5 form filed with the NASD Central Registration Depository ("CRD") by Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses, among others: statute of limitations; any alleged defamatory statements are true and constitute non-actionable opinion; absolute privilege and/or qualified privilege; and failure to mitigate.

Respondent asserted a cause of action for breach of contract relating to Claimant's employment with Respondent.

Unless specifically admitted in his Reply to the Counterclaim, Claim denied the allegations made in the Counterclaim.

RELIEF REQUESTED

Claimant in his Statement of Claim requested expungement of his CRD record, compensatory damages in the amount of \$50,000.00, punitive damages in the amount of \$50,000.00, costs, and attorneys' fees.

Respondent in its Counterclaim requested compensatory damages in the amount of \$38,000.00 and interest.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing on the merits, Claimant withdrew all of his claims for monetary damages. His only remaining claim was his request for expungement of his CRD record filed by Respondent. He requested that the reason for his termination be changed to "Voluntary" and to expunge the termination comment indicating Claimant was discharged for failure to perform to standards. Respondent also dropped its claim for monetary damages.

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 claim for expungement is denied in its entirety;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. 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	= \$ 225.00
Counterclaim filing fee	= \$1,000.00

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 at the time of the events giving rise to the dispute. Accordingly, Respondent is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00
Total Member Fees	= \$3,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 19, 2005 adjournment by Respondent = \$ 750.00

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:

One (1) Pre-hearing session with Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: September 7, 2004 1 session	
Two (2) Hearing sessions @ \$750.00	= \$1,500.00
Hearing Date: March 8, 2005 2 sessions	
Total Forum Fees	= \$2,250.00

1. The Panel has assessed \$1,125.00 of the forum fees to Claimant.
2. The Panel has assessed \$1,125.00 of the forum fees to Respondent.

FEE SUMMARY

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

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$1,125.00
Total Fees	= \$1,350.00
Less payments	= \$3,475.00
Refund Owed Claimant	= \$2,125.00

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

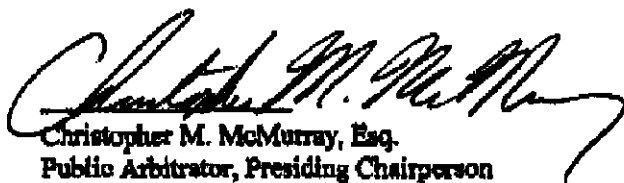
Initial Filing Fee	= \$1,000.00
Member Fees	= \$3,550.00
Adjournment Fee	= \$ 750.00
Forum Fees	= \$1,125.00
Total Fees	= \$6,425.00
Less payments	= \$5,750.00
Balance Due NASD Dispute Resolution	= \$ 675.00

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

ARBITRATION PANEL

Christopher M. McMurray, Esq.	-	Public Arbitrator, Presiding Chairperson
Carl F. Bowmer, Esq.	-	Public Arbitrator, Panelist
Donald L. Tarkenton	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures


Christopher M. McMurray, Esq.
Public Arbitrator, Presiding Chairperson

3/16/05
Signature Date

Carl P. Bowmer, Esq.
Public Arbitrator, Panelist

Signature Date

Donald L. Tarkenton
Non-Public Arbitrator, Panelist

Signature Date

March 18, 2005
Date of Service (For NASD Dispute Resolution office use only)

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Consenting Arbitrators' Signatures

Christopher M. McMurray, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Carl F. Bowner
Carl F. Bowner, Esq.
Public Arbitrator, Panelist

3-16-05
Signature Date

Donald L. Tarkenton
Non-Public Arbitrator, Panelist

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Carl F. Bowner, Esq.
Public Arbitrator, Panelist

Signature Date


Donald L. Tarkenton
Non-Public Arbitrator, Panelist

3-15-05
Signature Date

March 18, 2005
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