

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**  
CASE: 04-01064

Robert Faber, Claimant v. Merrill Lynch Pierce Fenner & Smith, Inc., Respondent.

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**ATTORNEYS:**

Claimant, Robert Faber, ("Claimant"), appeared pro se, New York, NY.

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., ("Respondent"), appeared through its in-house counsel, Scott G. Grubin, Esq., New York, NY.

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**NATURE OF DISPUTE:** Associated Person v. Member

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**DATE FILED:** February 18, 2004

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**CASE SUMMARY:** Claimant requested expungement relief based on the incorrect information in Section 3 of his Form U-5 maintained by the Central Registration Depository ("CRD"). Claimant further requested that the arbitrator order the corrected information for Section 3 of Form U-5 be put into the CRD system to list the reason for termination as, "Other - Retirement."

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**ARBITRATOR'S REPORT:** "Upon review of the pleadings and both sides having been heard in telephone conferences held before the Sole Arbitrator on July 1, July 9 and August 20, 2004, it is found, as forthrightly acknowledged by Respondent, that due to an administrative error on the part of Respondent's clerical staff, Claimant's registration on the Form U-5 mistakenly stated "other"/"reduction in staff", instead of "other"/"retirement" and accordingly, it is found that the mistake should be expunged and the Form U-5 corrected so that the correct entry can be put into CRD system and list the reason for termination as "other"/"retirement".

Respondent further agreed under these unique circumstances during the August 20, 2004 telephone hearing to immediately undertake to initiate and file the appropriate papers and proceedings in a court of competent jurisdiction and to pay all filing costs related thereto so that an order may promptly issue directing the expungement of the mistaken entry by NASD".

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**Claim Data**

Claim: \$.01  
Specific Performance: Expungement  
Filing Fees: \$.00  
Other: Unspecified

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**Award Data**

Award: \$.00  
Expungement Granted  
Filing Fees: \$50.00  
Other: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Claimant's claim to expunge his Central Registration Depository ("CRD") record is granted. 2) The arbitrator recommends the expungement of that section on Claimant, Robert Faber's Form U-5 filed by Merrill Lynch Pierce Fenner & Smith Inc., and maintained by the NASD CRD that contained the termination comment. The existing termination comment language "Reduction in staff" should be replaced with "Retirement" with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54 Claimant, Robert Faber must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. There is no change recommended to the actual reason from termination (i.e., "other"); the expungement recommendation only pertains to the accompanying termination comment. 3) All other relief requests are denied. 4) NASD Dispute Resolution shall retain the \$50.00 filing fee that the Claimant deposited previously. 5) Respondent is liable and shall pay to the Claimant \$50.00 as reimbursement of the filing fee.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Dispute Resolution the \$150.00 Member Surcharge previously invoiced.

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**FORUM FEES:** The arbitrator assessed forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that last four (4) hours or less. Forum fees associated with these proceedings are:

(3) Three Pre-hearing conferences held with a single arbitrator @ \$450.00 each = \$1,350.00

Dates:	July 1, 2004	1 session
	July 9, 2004	1 session
	August 20, 2004	1 Session

The arbitrator has assessed \$1,350.00 of the forum fees against the Respondent.

1. Respondent is solely liable for:

Forum Fees	\$1,350.00
Balance due NASD Dispute Resolution	\$1,350.00

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**ARBITRATOR**

**Marian S. Hertz, Esq. - Sole Non-Public Arbitrator**

### AFFIRMATION

I, Marian S. Hertz, Esq., do hereby affirm, upon my oath as arbitrator that I and the individual described herein who executed this instrument, which is my oath and award.

Marian S. Hertz, Esq.

September 8, 2004  
Signature Date

September 13, 2004

Date of Service (For NASD-DR office use only)