
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants
Scott Macolino and Roger Shaffer

Case Number: 04-03671

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

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Associated Person vs. Member.

REPRESENTATION OF PARTIES

For Scott Macolino ("Macolino") and Roger Shaffer ("Shaffer"), hereinafter collectively referred to as "Claimants": Charles M. Dalziel, Jr., Esq. and Joseph B. Alonso, Esq., Brock, Clay, Calhoun, Wilson & Rogers, P.C., Atlanta, Georgia and 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, Fortunato, Harbinson & Dougherty, P.C., Paoli, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about: May 20, 2004.

Claimant Macolino signed the Uniform Submission Agreement: May 18, 2004.

Claimant Shaffer signed the Uniform Submission Agreement: May 19, 2004.

Respondent signed the Uniform Submission Agreement: August 10, 2004.

Statement of Answer, Affirmative Defenses and Counterclaim filed by Respondent on or about: August 13, 2004.

Response to Answer, Affirmative Defenses and Counterclaim filed by Claimants on or about: September 1, 2004.

Sur-Reply in Support of its Counterclaim filed by Respondent on or about: September 14, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: wrongful termination; breach of agreement to pay salary and bonus for work performed; breach of Split-up Agreement; breach of equitable and just principles of trade; defamation; tortious interference with advantageous business relationships; breach of fiduciary duty; unfair and deceptive business practices; and, repondeat superior. The causes of action relate to Claimants' former employment with Respondent and the fully executed employment agreement entered into between Claimants and Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses. In addition, Respondent asserted a counterclaim for breach of contract and unfair competition.

Unless specifically admitted in their response to Respondent's Answer, Affirmative Defenses and Counterclaim, Claimants denied the allegations made in the Counterclaim and asserted various defenses.

RELIEF REQUESTED

Claimant Macolino requested compensatory damages in the amount of \$1,033,496.10, plus additional damages for his loss of core clients and assets in an amount to be determined at the hearing, attorneys' fees, costs, an unspecified amount of punitive damages and such other and further relief as the Panel deems just and proper. In addition, Claimant Macolino requested that the Panel enter an award supplementing the language for the reason for his termination on his Form U-5.

Claimant Shaffer requested compensatory damages in the amount of \$832,221.86, plus additional damages for his loss of core clients and assets in an amount to be determined at the hearing, attorneys' fees, costs, an unspecified amount of punitive damages and such other and further relief as the Panel deemed just and proper.

Respondent requested that Claimants' claims be dismissed in their entirety, with the assessment of all costs against Claimants, and all other relief deemed reasonable and appropriate by the Panel. In addition, as asserted in its Counterclaim and Sur-Reply in Support thereof, Respondent requested an award of damages in an amount to be determined at the hearing for its claim of breach of contract and unfair competition.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 26, 2005, Respondent filed with NASD Dispute Resolution a notice representing that the parties had largely resolved the claims in this case and requesting that the hearing remain scheduled for the sole purpose of determining the request to supplement the language on Claimant Macolino's Form U-5.

On or about October 10, 2005, the Panel issued an Order which stated that the sole issue to be decided at the hearing would be whether the Panel should enter an award requiring the NASD Central Registration Depository ("CRD") to supplement the language in Claimant Macolino's Form U-5.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues

submitted for determination as follows:

The Panel finds for Claimant Macolino and recommends that the following language be added to the reason for termination language for Claimant Macolino's Form U-5 filed by Merrill Lynch Pierce Fenner & Smith, Inc: *"It has now been determined that Scott Macolino was unaware of any client confidentiality agreement between his employer and a corporate entity."*

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	= \$ 500.00
Counterclaim filing fee	= \$ 500.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm Merrill Lynch Pierce Fenner & Smith, Inc. is a party

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred 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 arbitrator(s) that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 2,400.00

Pre-hearing conferences:	October 20, 2004	1 session
	October 7, 2005	1 session

Two (2) Hearing sessions @ \$1,200.00/session = \$ 2,400.00

Hearing Dates: October 25, 2005 2 sessions

Total Forum Fees	= \$ 4,800.00
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The Panel has assessed \$2,400.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$2,400.00 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 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

Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 500.00

Forum Fees	= \$ 2,400.00
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Total Fees	= \$ 2,900.00
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Less payments = \$ 1,800.00

Balance Due NASD Dispute Resolution	= \$ 1,100.00
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Respondent is solely liable for:

Counterclaim Filing Fee = \$ 500.00

Member Fees		= \$ 8,550.00
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Forum Fees = \$ 2,400.00

Total Fees	= \$11,450.00
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Less payments = \$11,450.00

Balance Due NASD Dispute Resolution	= \$	0.00
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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

John F. O'Neill, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Michael J. Ahlstrom, Esq.	-	Public Arbitrator
Daniel H. Kolber	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
John F. O'Neill, Jr., Esq.
Public Arbitrator, Presiding Chairperson

November 7, 2005
Signature Date

/s/
Michael J. Ahlstrom, Esq.
Public Arbitrator

November 4, 2005
Signature Date

/s/
Daniel H. Kolber
Non-Public Arbitrator

November 4, 2005
Signature Date

November 9, 2005
Date of Service (For NASD Dispute Resolution office use only)



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John F. O'Neill, Jr., Esq.
Michael J. Ahlstrom, Esq.
Daniel H. Kolber

Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

John F. O'Neill, Jr., Esq.
Public Arbitrator, Presiding Chairperson

11/7/05
Signature Date

Michael J. Ahlstrom, Esq.
Public Arbitrator

Signature Date

Daniel H. Kolber
Non-Public Arbitrator

Signature Date

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

ARBITRATION PANEL

John F. O'Neill, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Michael J. Ahlstrom, Esq.	-	Public Arbitrator
Daniel H. Kolber	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

John F. O'Neill, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Michael J. Ahlstrom

Michael J. Ahlstrom, Esq.
Public Arbitrator

11-4-05

Signature Date

Daniel H. Kolber
Non-Public Arbitrator

Signature Date

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

ARBITRATION PANEL

John F. O'Neill, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Michael J. Ahlstrom, Esq.	-	Public Arbitrator
Daniel H. Kolber	-	Non-Public Arbitrator

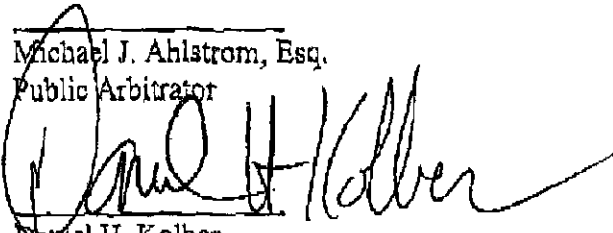
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John F. O'Neill, Jr., Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Michael J. Ahlstrom, Esq.
Public Arbitrator

Signature Date


Daniel H. Kolber
Non-Public Arbitrator

11/4/05

Signature Date

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