

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

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In the Matter of the Arbitration Between:

Merrill Lynch, Pierce, Fenner & Smith, Inc. (Claimant) v. Ciaran McKeever and Brian McKeever (Respondents)

Case Number: 04-04134

Hearing Site: New York, New York

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Nature of the Dispute: Member v. Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") hereinafter referred to as "Claimant": Susan M. Guerette, Esq., Rubin, Fortunato, Harbison & Dougherty, P.C., Paoli, PA.

Respondents Ciaran McKeever ("C. McKeever") and Brian McKeever ("B. McKeever") hereinafter collectively referred to as "Respondents": Mark Astarita, Esq., Beam & Astarita, LLC. Previously represented by D. Christopher Walker, Esq., Beam & Astarita, LLC, Bloomfield, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: June 14, 2004.

Reply and Affirmative Defenses to Respondents' Counterclaims filed by Claimant on or about: September 24, 2004.

Claimant signed the Uniform Submission Agreement.

Joint Statement of Answer, Affirmative Defense, and Counterclaim filed by Respondents on or about: August 27, 2004.

Respondent C. McKeever signed the Uniform Submission Agreement: September 1, 2004.

Respondent B. McKeever signed the Uniform Submission Agreement: September 1, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of promissory note; breach of training cost agreement; and unjust enrichment. Unless specifically admitted in its Reply and Affirmative Defenses to Respondents' Counterclaims, Claimant denied the allegations of wrongdoing set forth in the Counterclaim and asserted various affirmative defenses.

Unless specifically admitted in their Answer, Affirmative Defense, and Counterclaims, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses. In their Counterclaims, Respondents asserted the

tortious interference; and false and slanderous statements.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$142,038.86, plus interest at 7.125% per annum against C. McKeever; compensatory damages in the amount of \$10,000.00, plus interest against C. McKeever; compensatory damages in the amount of \$19,000.00, plus interest against B. McKeever; costs, including filing fees, hearing deposit, attorneys' fees, forum fees; and such other and further relief as the Panel deems just and appropriate. In its Reply and Affirmative Defenses to Respondents' Counterclaims, Claimant requested that the Counterclaims be dismissed or denied in their entirety; and any other relief that is just and proper.

Respondents requested that Claimant's claim be dismissed. On their Counterclaims, Respondents requested compensatory damages in the amount of \$250,000.00; and other relief.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about April 1, 2005, NASD Dispute Resolution was notified that the parties settled this matter. On or about April 12, 2005, NASD Dispute Resolution was notified that the parties requested a Stipulated Award.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimant's claims against Brian McKeever are dismissed in their entirety.
2. Any sums currently held at Merrill Lynch to which Ciaran McKeever has any right, title or interest shall be forfeited to Merrill Lynch, including any monies currently held in an investment account or any monies associated or distributed as part of his deferred compensation. Ciaran McKeever further agrees to pay Merrill Lynch the total sum of Thirty-Nine Thousand Dollars (\$39,000.00). Payment of the remaining amount of the settlement shall be made according to the following schedule:

\$500.00 to be paid on or before April 15, 2005;  
\$500.00 to be paid on or before May 15, 2005;  
\$500.00 to be paid on or before June 15, 2005;

\$500.00 to be paid on or before July 15, 2005;  
\$500.00 to be paid on or before August 15, 2005;  
\$500.00 to be paid on or before September 15, 2005;  
\$500.00 to be paid on or before October 15, 2005;  
\$500.00 to be paid on or before November 15, 2005;  
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\$500.00 to be paid on or before September 15, 2011.

Checks in these amounts shall be made payable to "Merrill Lynch, Pierce, Fenner & Smith Incorporated," and transmitted to Rubin, Fortunato, Harbison and Dougherty, P.C., 10 South Leopard Road, Paoli, Pennsylvania 19301.

3. If Ciaran McKeever shall fail to make any payment as set forth above within fifteen (15) days of its due date, then Merrill Lynch shall have the immediate right to proceed with execution, garnishment, or any other method to enforce this judgment. Prior to commencing enforcement proceedings, Merrill Lynch will send a written notice informing Ciaran McKeever and his counsel of the default at the following addresses:

Ciaran McKeever  
242-77 44<sup>th</sup> Avenue  
Douglaston, NY 11363

D. Christopher Walker, Esquire  
Beam & Astarita  
300 Broadacres Drive  
Bloomfield, NJ 07003

4. Respondents' Counterclaims are dismissed in their entirety.
5. Any and all other relief not specifically addressed herein is denied.

### **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	= \$ 300.00

#### **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, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

Two (2) Pre-hearing conference sessions with single arbitrator @ \$450.00/session = \$ 900.00

Pre-hearing conferences	March 25, 2005	1 session
	March 29, 2005	1 session

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$1,125.00

Pre-hearing conference	November 15, 2004	1 session
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Total Forum Fees = \$2,025.00

1. The Panel has assessed \$1,012.50 of the forum fees against Claimant.
2. The Panel has assessed \$1,012.50 of the forum fees jointly and severally against Respondents.

### **Fee Summary**

1. Claimant is solely liable for:

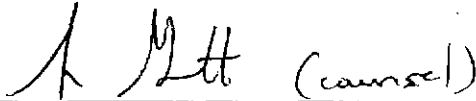
Initial Filing Fee	= \$1,000.00
Member Fees	= \$5,200.00
Forum Fees	= \$1,012.50
Total Fees	= \$7,212.50
Less payments	= \$7,325.00
Refund Due Claimant	= \$ 112.50

2. Respondents are jointly and severally liable for:

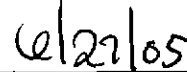
Counterclaim Filing Fee	= \$ 300.00
Forum Fees	= \$1,012.50
Total Fees	= \$1,312.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,312.50

All balances are due and payable to NASD Dispute Resolution

**Parties' Signatures**

 (counsel)

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Claimant



Signature Date

Ciaran McKeever  
Respondent

Signature Date


Brian McKeever  
Respondent

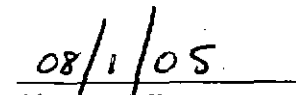
Signature Date

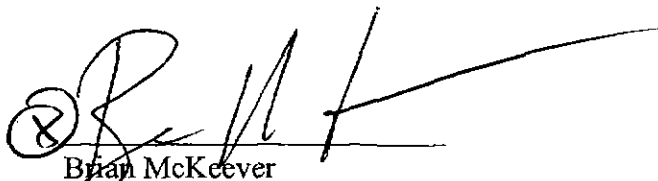
**Parties' Signatures**

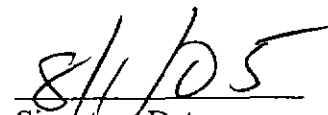
\_\_\_\_\_  
Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Claimant

\_\_\_\_\_  
Signature Date

  
Ciaran McKeever  
Respondent

  
Signature Date

  
Brian McKeever  
Respondent

  
Signature Date




**ARBITRATION PANEL**

Lori E. Caughman, Esq.	-	Public Arbitrator, Presiding Chair
Carolyn E. Wade, Esq.	-	Public Arbitrator
Mark Hammaren	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument is which is my award.

  
Lori E. Caughman, Esq.  
Public Arbitrator, Presiding Chair

12-30-05  
Signature Date

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Carolyn E. Wade, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Mark Hammaren  
Non-Public Arbitrator

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Signature Date

JANUARY 17, 2006  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

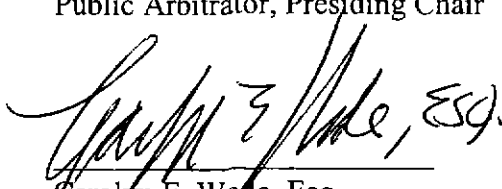
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Mark Hammaren  
Non-Public Arbitrator

12/7/05  
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Signature Date

JANUARY 17, 2006  
Date of Service (For NASD office use only)