
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
David Neil Frand

Case Number: 04-04152

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

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Associated Person vs. Member.

REPRESENTATION OF PARTIES

For David Neil Frand, hereinafter referred to as "Claimant": Leon Greenspan, Esq. and Michael Greenspan, Esq., Greenspan & Greenspan, White Plains, New York.

For Merrill Lynch, Pierce, Fenner & Smith, Inc., hereinafter referred to as "Respondent": Michael J. Fortunato, Esq. and Karen L. Palermo, Esq., Rubin, Fortunato, Harbison & Dougherty, P.C., Paoli, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about: June 7, 2004.

Claimant signed the Uniform Submission Agreement: May 26, 2004.

Statement of Answer and Counterclaim filed by Respondent on or about: September 7, 2004.

Respondent signed the Uniform Submission Agreement: August 16, 2004.

Response to Statement of Answer and Answer to Counterclaim filed by Claimant on or about: September 27, 2004.

Motion for Summary Judgment filed by Respondent on or about: March 8, 2005.

Reply to Motion for Summary Judgment filed by Claimant on or about: March 10, 2005.

Response to Claimant's Reply to the Motion for Summary Judgment filed by Respondent on or about: March 11, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: 1) civil theft pursuant to Florida Statutes, Sections 772.11 *et seq.* and 812.012; 2) conversion and economic duress; 3) fraud; 4) deceptive trade practice in violation of Florida Statutes, Section 501.201; 5) defamation, including libel, slander, injurious falsehood and injury to business reputation; 6) interference with contractual relations; and, 7) violation of the covenant of good faith and fair dealing. The causes of action relate to the termination of Claimant's employment.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Respondent asserted, in its Counterclaim, the following causes of action: 1) breach of contract; and, 2) unjust enrichment. The causes of action relate to a certain Promissory Note.

Unless specifically admitted in his Answer to the Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$19,375,000.00, punitive/treble damages, interest, costs, attorney's fees, rescission of the promissory note, restitution of all sums and stock, value of the clientele, declaratory judgment, injunctive relief and expungement of his NASD Central Registration Depository (the "CRD") Form U-5.

Respondent requested, in its Counterclaim, compensatory damages of \$83,409.58, interest at the rate of 4.750%, costs and attorneys' fees pursuant to the terms of the promissory note.

OTHER ISSUES CONSIDERED AND DECIDED

On or about April 7, 2005, the Panel issued an Order that denied Respondent's Motion for Summary Judgment.

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

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:

Respondent is found liable for interference with contractual relations and shall pay to Claimant compensatory damages in the amount of \$52,000.00, pre-judgment interest denied.

Claimant is found not liable and Respondent's Counterclaim is denied in its entirety, with prejudice.

Any and all claims for relief not specifically addressed herein, including Claimant's requests for relief pursuant to Florida Statutes, Sections 772.11 *et. seq.*, 812.012 and 501.201 and punitive/treble damages and the parties' requests for attorneys' fees, are denied.

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	= \$ 600.00
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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$3,750.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,500.00

Adjournment Fees

No requests for adjournments were filed 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 assessed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

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 @ \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: November 11, 2004	1 session
May 20, 2005	1 session
Fifteen (15) Hearing sessions with the Panel @ \$1,200.00	= \$18,000.00
Hearing Dates: May 23, 2005	2 sessions
May 24, 2005	3 sessions
May 25, 2005	2 sessions
May 26, 2005	3 sessions
May 27, 2005	1 session
June 29, 2005	2 sessions
June 30, 2005	2 sessions
Total Forum Fees	= \$20,400.00

The Panel has assessed the total forum fees in the amount of \$20,400.00 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 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 during this proceeding.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent is solely liable for:

<u>Counterclaim Filing Fee</u>	= \$ 1,000.00
<u>Member Fees</u>	= \$ 10,000.00
<u>Forum Fees</u>	= \$ 20,400.00
<u>Total Fees</u>	= \$ 31,400.00
<u>Less payments</u>	= \$ 11,750.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 19,650.00

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

ARBITRATION PANEL

<i>Bernard J. Kune, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Stuart J. MacGregor, Esq.</i>	-	<i>Public Arbitrator</i>
<i>E. Stephen Walsh, Esq.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Bernard J. Kune, Esq.
Public Arbitrator, Presiding Chairperson

07/01/05
Signature Date

/s/
Stuart J. MacGregor, Esq.
Public Arbitrator

07/05/05
Signature Date

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/s/
E. Stephen Walsh, Esq.
Non-Public Arbitrator

07/01/05
Signature Date

07/05/05
Date of Service (For NASD Dispute Resolution office use only)

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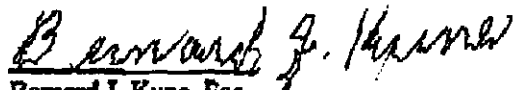
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Stuart J. MacGregor, Esq.
E. Stephen Walsh, Esq.

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures



Bernard J. Kune, Esq.
Public Arbitrator, Presiding Chairperson

7/1/05
Signature Date

Stuart J. MacGregor, Esq.
Public Arbitrator

Signature Date

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Stuart J. MacGregor, Esq.	-	Public Arbitrator
E. Stephen Walsh, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Bernard J. Kune, Esq.
 Public Arbitrator, Presiding Chairperson

Signature Date


 Stuart J. MacGregor, Esq.
 Public Arbitrator

7/5/05
 Signature Date

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E. Stephen Walsh
E. Stephen Walsh, Esq.
Non-Public Arbitrator

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Signature Date

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