

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

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In the Matter of the Arbitration Between:

James W. Reidy (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc., E. Stanley O'Neal,  
John C. Stomber, and Cory Little (Respondents)

Case Number: 04-04279

Hearing Site: Boston, Massachusetts

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Nature of the Dispute: Associated Person vs. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant James W. Reidy ("Reidy") hereinafter referred to as "Claimant": Theodore J. Folkman, Esq., Hanify & King, P.C., Boston, MA.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), E. Stanley O'Neal ("O'Neal"), and Cory Little ("Little"): Joshua M. Davis, Esq., Goulston & Storrs, Boston, MA.

Respondent John C. Stomber ("Stomber") did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: June 15, 2004.

Memorandum in Opposition to Respondents' Motion to Dismiss filed by Claimant on or about: January 28, 2005.

Claimant signed the Uniform Submission Agreement: June 14, 2004.

Joint Motion to Dismiss and Statement of Answer filed by Respondents Merrill Lynch, O'Neal, and Little on or about: September 2, 2004.

Respondent Merrill Lynch did not sign the Uniform Submission Agreement.

Respondent O'Neal did not sign the Uniform Submission Agreement.

Respondent Little did not sign the Uniform Submission Agreement.

Respondent Stomber did not file a Statement of Answer or sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; promissory estoppel; quantum meruit; and violation of the Wage Act, G.L. c. 149, §148.

Unless specifically admitted in their Answer, Respondents Merrill Lynch, O'Neal, and Little denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$244,000.00; treble damages in the amount of \$488,000.00 in accordance with G.L. c. 149, §150; interest in the amount of \$82,960.00 (as of June 1, 2004; interest continues to accrue at the rate of 12%); costs; attorneys' fees; and other case-related costs.

Respondents Merrill Lynch, O'Neal, and Little requested that the Panel dismiss Claimant's claim; and costs and fees, including attorneys' fees.

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

Upon review of the file and the representations made on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondent O'Neal has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Stomber is not an Associated Person of an NASD Member firm and, therefore, was not required to arbitrate in this forum and did not submit to NASD Dispute Resolution's jurisdiction.

Respondents Merrill Lynch, O'Neal, and Little did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

Respondents Merrill Lynch, O'Neal, and Little made a motion to dismiss at the conclusion of Claimant's case. After due consideration, the Panel unanimously determined to deny the motion.

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

### **AWARD**

After considering the pleadings, and 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 claims are denied in their entirety.
2. Any and all relief not specifically addressed herein, including treble damages, 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 = \$375.00

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

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

March 28-30, 2005, adjournment by Respondents Merrill Lynch, O'Neal, and Little= \$1,200.00

Respondent Merrill Lynch's share = \$1,200.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the 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 Panel @ \$1,200.00 = \$2,400.00

Pre-hearing conferences: January 6, 2005 1 session  
February 14, 2005 1 session

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

Hearing Date: April 28, 2005 2 sessions

Total Forum Fees = \$4,800.00

1. The Panel has assessed \$2,400.00 of the forum fees against Claimant.
2. The Panel has assessed \$2,400.00 of the forum fees jointly and severally against Respondents Merrill Lynch, O'Neal, and Little.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee = \$ 375.00

Forum Fees = \$2,400.00

Total Fees = \$2,775.00

Less payments = \$1,575.00

Balance Due NASD Dispute Resolution	= \$1,200.00
2. Respondent Merrill Lynch is solely liable for:	
Member Fees	= \$7,000.00
<u>Adjournment Fee</u>	<u>= \$1,200.00</u>
Total Fees	= \$8,200.00
<u>Less payments</u>	<u>= \$8,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondents Merrill Lynch, O'Neal, and Little are jointly and severally liable for:	
<u>Forum Fees</u>	<u>= \$2,400.00</u>
Total Fees	= \$2,400.00
<u>Less payments</u>	<u>= \$ 750.00</u>
Balance Due NASD Dispute Resolution	= \$1,650.00

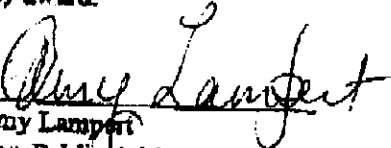
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Amy Lampert	-	Non-Public Arbitrator, Presiding Chairperson
Christine Armstrong, Esq.	-	Non-Public Arbitrator
John A. Morin, Esq.	-	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 which is my award.

  
\_\_\_\_\_  
Amy Lampert  
Non-Public Arbitrator, Presiding Chairperson

5/4/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Christine Armstrong, Esq.  
Non-Public Arbitrator

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

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John A. Morin, Esq.  
Non-Public Arbitrator

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Signature Date

May 6, 2005  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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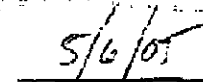
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