

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Peter F. Sansevero, Jr.

Case Number: 04-07224

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

Hearing Site: Tampa, Florida

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Nature of the Dispute: Associated Person vs. Member.

**REPRESENTATION OF PARTIES**

For Peter F. Sansevero, Jr., hereinafter referred to as "Claimant": James A. Bledsoe, Jr., Esq. and Tracey Leigh Henderson, Esq., Bledsoe, Jacobson, Schmidt, & Wright, Jacksonville, Florida.

For Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"), hereinafter referred to as "Respondent": Carole G. Miller, Esq. and Theodore P. Bell, Esq., Maynard Cooper & Gale, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: October 12, 2004.

Claimant signed the Uniform Submission Agreement: October 11, 2004.

Statement of Answer filed by Respondent on or about: December 13, 2004.

Respondent signed the Uniform Submission Agreement: November 5, 2004.

**CASE SUMMARY**

Claimant alleged Respondent wrongfully terminated his employment and thereafter filed a false Form U-5. Claimant further alleged that as a result, he has been unable to obtain employment in the securities industry. The causes of action relate to Claimant's termination of employment from Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested damages of \$475,000.00 which includes back pay, costs and fees for Claimant's job search, reimbursement of COBRA health insurance premiums, attorneys' fees and costs, reimbursement for the premature liquidation of Claimant's Merrill Lynch stock, and reimbursement of taxes incurred on Claimant's premature 401k withdrawal; the retraction and expungement of Claimant's Form U-5; and, an official apology from Respondent.

Respondent requested that Claimant's Statement of Claim be dismissed in its entirety; that

Claimant take nothing by this action; that Respondent be awarded its costs and attorneys' fees for the defense of this action; and, that Respondent be awarded such other and further relief as the arbitration panel deemed proper.

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

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 undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

The arbitration panel finds for Respondent and against Claimant on all claims.

Each party shall pay their respective fees and costs.

Any and all claims for relief not specifically addressed herein are denied.

The Panel recommends the expungement of the following language contained in Item Number 3 of the Form U-5 filed by Respondent Merrill Lynch, Central Registration Depository ("CRD") 7691, Reason for Termination: "Mr. Sansevero was terminated on September 26, 2003, for failure to adhere to the firm's policies regarding electronic communications. This matter did not involve Mr. Sansevero's servicing of client accounts." In its place, the following language should be included: "Mr. Sansevero was terminated on September 26, 2003, for failure to adhere to the firm's e-mail policies. The matter did not involve servicing of client accounts, violating investment-related statutes, regulations, or rules; fraud or the wrongful taking of property; or, failure to supervise in connection with investment-related statutes, regulations, rules or industry standards of conduct. No harm, damage or injury was suffered by any individual or firm. Even though the Panel feels the Claimant's termination may have been justified, the Panel further feels that the Claimant is a good, honorable and knowledgeable person with many good years left to contribute to the industry." The Panel recommends the above with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Claimant must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

### **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	= \$300.00
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### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$2,750.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees 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:

There were no three-day cancellation fees 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$1,350.00
Pre-hearing conferences:	
June 9, 2005	1 session
August 18, 2005	1 session
September 13, 2005	1 session
One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference:	
March 15, 2005	1 session
Six (6) Hearing sessions @ \$1,125.00	= \$6,750.00
Hearing Dates:	
October 4, 2005	2 sessions
October 5, 2005	2 sessions
October 6, 2005	2 sessions

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Total Forum Fees	= \$9,225.00
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The Panel has assessed \$4,612.50 of the forum fees to Claimant.

The Panel has assessed \$4,612.50 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**

Claimant is solely liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$4,612.50

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Total Fees	= \$4,912.50
Less payments	= \$1,425.00

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Balance Due NASD Dispute Resolution	= \$3,487.50
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Respondent is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$4,612.50

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Total Fees	= \$9,812.50
Less payments	= \$5,850.00

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Balance Due NASD Dispute Resolution	= \$3,962.50
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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**

Paul Sidney Elliott, J.D., CFP	-	Public Arbitrator, Presiding Chair
Alun Hywel Jones	-	Public Arbitrator
Andrew G. Fellios	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
Paul Sidney Elliott, J.D., CFP  
Public Arbitrator, Presiding Chair

October 12, 2005  
Signature Date

\_\_\_\_\_/S/\_\_\_\_\_  
Alun Hywel Jones  
Public Arbitrator

October 13, 2005  
Signature Date

\_\_\_\_\_/S/\_\_\_\_\_  
Andrew G. Fellios  
Non-Public Arbitrator

October 12, 2005  
Signature Date

October 13, 2005  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

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Paul Sidney Elliott, J.C., CFP  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Alan Hywel Jones  
Public Arbitrator


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

Andrew G. Fellios  
Andrew G. Fellios  
Non-Public Arbitrator

12 October 2005  
Signature Date

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

Concurring Arbitrators' Signatures

  
Paul Sidney Elliott, J.D., CFP  
Public Arbitrator, Presiding Chair

10/12/05  
Signature Date

Alun Hywel Jones  
Public Arbitrator

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

Andrew G. Fellios  
Non-Public Arbitrator

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

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

Concurring Arbitrators' Signatures

Paul Sidney Elliott, J.D., CFP  
Public Arbitrator, Presiding Chair



Alma Hywel Jones  
Public Arbitrator

Andrew G. Fellios  
Non-Public Arbitrator

Signature Date

October 13, 2005

Signature Date

Signature Date

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