

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Marvin Pheffer, Claimant v. Mercury Securities, Respondent

Case Number: 04-07937

Hearing Site: San Francisco, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant:

David M. Greenberg, Esq.
Larkspur, California

For Respondent:

Maia McGehee
Mercury Securities
San Rafael, California

CASE INFORMATION

Statement of Claim filed: November 11, 2004

Claimant's Uniform Submission Agreement signed: November 11, 2004

Statement of Answer filed by Respondent Mercury Securities: January 3, 2005

Respondent Mercury Securities' Uniform Submission Agreement signed: December 8, 2004

CASE SUMMARY

Claimant alleged that Respondent filed a false Form U-5 with respect to Claimant's affiliation with Mercury Securities. Claimant also alleged that Respondent has refused to pay Claimant approximately \$500.00 of commissions due to Claimant.

Respondent alleged that it properly and truthfully reported Claimant's discharge and alleged that Claimant was paid all commissions. Respondent also alleged that it is not liable to Claimant for costs or attorney's fees in this matter.

RELIEF REQUESTED

Claimant requested:

1. An order from the Panel finding that the statement in the Form U-5 that Respondent discharged Claimant is defamatory and ordering that the reference to a discharge be expunged and replaced with a "voluntary" termination reference;
2. An award in favor of Claimant in the amount of \$500.00 relating to the commissions owed; and
3. An award in favor of Claimant in the amount of his arbitration costs and attorney's fees.

Respondent requested:

1. That the Panel uphold the information placed on Claimant's Form U-5;
2. That the Panel deny Claimant's commission claims; and
3. That the Panel deny Claimant's request for arbitration costs and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On December 2, 2004, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Panel finds in favor of Claimant Marvin Pheffer and orders expungement from Mr. Pheffer's records maintained by the NASD Central Registration Depository ("CRD") of the statement noted in item three in the subject Form U-5 that Respondent discharged Mr. Pheffer and that Mr. Pheffer is moving his office, and attempting to transfer the firm's accounts. The expungement order is based on the defamatory nature of the information, as the accurate and correct reason for termination shall be "Voluntary." The Panel also recommends the expungement of all reference to the above captioned arbitration from Mr. Pheffer's registration records maintained by the CRD.

- 2) Regarding the issue of trailing commissions on mutual funds, Respondent is liable to and shall pay Claimant the sum of \$375.00.
- 3) Respondent is liable to and shall pay Claimant the sum of \$25.00 as reimbursement for Claimant's filing fee.
- 4) Except as noted above, each party shall bear its own costs, including attorney's fees.
- 5) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 25.00
--------------------------	------------

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, Mercury Securities is a party and the following fees are assessed:

Member Surcharge	= \$150.00
Total Member Fees	= \$150.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with a single arbitrator @ \$25.00/session	= \$25.00
Pre-hearing conference: March 15, 2005 1 session	

(1) Hearing session @ \$25.00/session	= \$25.00
Hearing: April 6, 2005 1 session	

Total Forum Fees	= \$50.00
------------------	-----------

The Panel assessed the \$50.00 in forum fees to Respondent.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 25.00
<u>Less Payments</u>	= \$(50.00)
Refund Due Claimant	= \$(25.00)

2. Respondent Mercury Securities is charged with the following fees and costs:

Member Fees	= \$ 150.00
<u>Forum Fees</u>	= \$ 50.00
Total Fees	= \$ 200.00
<u>Less Payments</u>	= \$(150.00)
Balance Due NASD-DR	= \$ 50.00

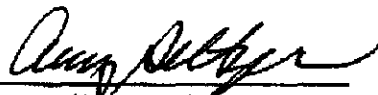
All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Amy Seltzer, Ph.D

- Public Arbitrator, Presiding Chair

Presiding Arbitrator's Signature


Amy Seltzer, Ph.D
Chair, Public Arbitrator

4-14-05
Signature Date

4/14/05
Date of Service