

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

---

In the Matter of the Arbitration Between:

Name of the Claimant  
Merrill Lynch, Pierce,  
Fenner & Smith Incorporated

Case Number: 05-02224

Name of the Respondent  
William Anderson

Hearing Site: Atlanta, Georgia

---

Nature of the Dispute: Member vs. Associated Person.

**REPRESENTATION OF PARTIES**

For Merrill Lynch, Pierce, Fenner & Smith Incorporated, hereinafter referred to as "Claimant":  
Karen L. Palermo, Esq., Rubin Fortunato, P.C., Paoli, Pennsylvania.

For William Anderson, hereinafter referred to as "Respondent": John H. Killeen, Esq., Bodker,  
Ramsey, Andrews, Winograd & Wildstein, P.C., Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: April 26, 2005.

Claimant signed the Uniform Submission Agreement: April 26, 2005.

Answer and Counterclaim filed by Respondent on or about: June 20, 2005.

Respondent signed but did not date the Uniform Submission Agreement.

Merrill Lynch's Answer and Affirmative Defenses to Respondent's Counterclaim filed on or  
about: July 12, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract and unjust enrichment. The causes of action relate to a promissory note entered into between the parties in connection with Respondent's employment with Claimant.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the *Statement of Claim* and asserted various defenses. In addition, in his Counterclaim, Respondent asserted the following causes of action: breach of contract and attorneys' fees and costs. The causes of action relate to Respondent's Employment Agreement with Claimant.

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

**RELIEF REQUESTED**

Claimant requested that the arbitration panel award Claimant the amount of \$33,894.00 plus

interest at the rate of 4.50%; grant Claimant its costs of collection (including the filing fee and hearing deposit which Claimant paid for this arbitration); and, grant Claimant its reasonable attorneys' fees as set forth in the promissory note of \$16,860.37. Further, in its Answer to Counterclaim, Claimant requested that Respondent's claims be denied in their entirety; that all costs be assessed against Respondent; and, that the arbitration panel award to Claimant all other relief that it deemed reasonable and appropriate under the circumstances of this case.

Respondent requested that the arbitration panel deny Claimant's Statement of Claim in full; enter judgment in favor of Respondent against Claimant; and, award Respondent such other and further relief as may be justified by the evidence and as may be deemed appropriate. Further, in his Counterclaim, Respondent requested that he be awarded the principal amount of \$33,894.00 plus interest from Claimant for the lump sum amount owed to Respondent to cover any remaining transition payments; that Respondent be awarded the principal amount of \$45,000.00 from Claimant for his unpaid salary, plus damages for Claimant's breach of its agreement to forgive any excess compensation; that Respondent be awarded interest at the rate of interest provided by law; that Respondent be awarded his attorneys' fees and costs incurred in this action from Claimant of \$29,521.54; and, such other and further relief as the arbitration panel deemed just and 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:

All claims asserted in the claim and counterclaim are denied.

Respondent is liable and shall pay to Claimant the sum of \$8,430.00 representing 50% of Claimant's legal fees incurred pursuant to the Employment Agreement, paragraph 10 at page 6.

Claimant is liable and shall pay to Respondent the sum of \$14,761.00 representing 50% of Respondent's legal fees incurred pursuant to the Employment Agreement, paragraph 10 at page 6.

Any and all claims for relief not specifically addressed herein 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	= \$1,000.00
Counterclaim filing fee	= \$225.00

### **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	= \$875.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$1,700.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were 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:

No three-day cancellation fees were 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:

One (1) Pre-hearing session with the Panel @ \$750.00	= \$750.00
Pre-hearing conference: August 29, 2005 1 session	
Two (2) Hearing sessions @ \$750.00	= \$1,500.00
Hearing Dates: January 10, 2006 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$2,250.00

The Panel has assessed the total forum fees of \$2,250.00 to Claimant.

**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	= \$1,000.00
Member Fees	= \$3,325.00
Forum Fees	= \$2,250.00

---

Total Fees	= \$6,575.00
Less payments	= \$4,925.00

---

Balance Due NASD Dispute Resolution	= \$1,650.00
-------------------------------------	--------------

Respondent is solely liable for:

Filing Fee	= \$225.00
------------	------------

---

Total Fees	= \$225.00
Less payments	= \$225.00

---

Balance Due NASD Dispute Resolution	= \$0.00
-------------------------------------	----------

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

**ARBITRATION PANEL**

Frederick T.W. Reed	-	Non-Public Arbitrator, Presiding Chair
Gary Francis Forte	-	Non-Public Arbitrator
Richard J. Floress	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/S/  
Frederick T.W. Reed  
Non-Public Arbitrator, Presiding Chair

January 23, 2006  
Signature Date

/S/  
Gary Francis Forte  
Non-Public Arbitrator

January 24, 2006  
Signature Date

/S/  
Richard J. Floress  
Non-Public Arbitrator

January 23, 2006  
Signature Date

January 24, 2006  
Date of Service (For NASD Dispute Resolution office use only)

The Panel has assessed the total forum fees of \$2,250.00 to Claimant.

**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	= \$1,000.00
Member Fees	= \$3,325.00
Forum Fees	= \$2,250.00

Total Fees	= \$6,575.00
Less payments	= \$4,925.00

Balance Due NASD Dispute Resolution	= \$1,650.00
-------------------------------------	--------------

Respondent is solely liable for:

Filing Fee	= \$225.00
------------	------------

Total Fees	= \$225.00
Less payments	= \$225.00

Balance Due NASD Dispute Resolution	= \$0.00
-------------------------------------	----------

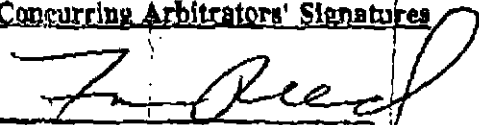
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**


Frederick T.W. Reed  
Gary Francis Forte  
Richard J. Fiorosa

Non-Public Arbitrator, Presiding Chair  
Non-Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Frederick T.W. Reed  
Non-Public Arbitrator, Presiding Chair

  
Signatures Date



Gary Francis Forte  
Non-Public Arbitrator

1-24-06

Signature Date

Richard J. Floress  
Non-Public Arbitrator

Signature Date

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

---

Gary Francis Forte  
Non-Public Arbitrator

  
Richard J. Floress  
Non-Public Arbitrator

---

Signature Date

1-23-06  
Signature Date

---

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