

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant
Richard C. Emerson

Case Number: 05-02495

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 Richard C. Emerson, hereinafter referred to as "Claimant": Liam O'Brien, Esq.,
Liam O'Brien & Associates, New York, New York.

For Merrill Lynch Pierce Fenner & Smith, Inc., 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: May 11, 2005.

Claimant signed but did not date the Uniform Submission Agreement.

Claimant's Motion to Preclude Respondent from Filing an Answer and Presenting
Defenses filed on or about: July 26, 2005.

Respondent signed the Uniform Submission Agreement on: August 1, 2005.

Respondent's Response to Claimant's Motion to Preclude Respondent from Filing an
Answer and Presenting Defenses filed on or about: August 5, 2005.

Answer and Defenses to the Statement of Claim filed on or about: August 5, 2005.

Respondent's Motion to Dismiss filed on or about: January 26, 2006.

Claimant's Brief in Opposition to Respondent's Motion to Dismiss filed on or about:
March 22, 2006.

Claimant's Motion to Amend Statement of Claim filed on or about: March 22, 2006.

Amended Statement of Claim filed on or about: March 22, 2006.

Respondent's Reply in Support of Its Motion to Dismiss filed on or about: March 29,
2006.

Claimant's Motion for Reconsideration of the Panel's Order on Respondent's Motion to
Dismiss filed on or about: March 30, 2006.

Respondent's Response to Claimant's Motion to Reconsider filed on or about: March
30, 2006.

Claimant's Reply Brief in Support of His Motion to Reconsider filed on or about: March
31, 2006.

Respondent's Response to Claimant's Motion to Amend filed on or about: April 10,
2006.

Amended Answer and Defenses filed by Respondent on or about: July 6, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: 1) wrongful termination; 2) conversion; 3) unjust enrichment; 4) tortious interference; 5) intentional infliction of emotional distress; 6) negligent infliction of emotional distress; 7) negligence; 8) breach of implied covenant of good faith and fair dealing; 9) breach of implied contract; and 10) libel. The causes of action relate to Respondent's wrongful termination of Claimant and Respondent's reporting on Claimant's Form U-5.

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

RELIEF REQUESTED

Claimant requested: 1) compensatory damages in the amount of \$1,650,000.00; 2) unspecified punitive damages in an amount to be determined at the hearing; 3) interest; 4) costs; 5) attorneys' fees; 6) an order directing submission of an amended Form U-5 removing all references to "permitted to resign"; 7) an order directing expungement of all references to "permitted to resign" from Claimant's registration records maintained by the NASD Central Registration Depository ("CRD"); 8) such other and further relief as the Panel deems appropriate; and 9) and recovery for physical and emotional suffering.

Respondent requested that the Panel: 1) dismiss Claimant's Statement of Claim, as amended, in its entirety; 2) award Respondent its costs and attorneys' fees for the defense of this action; and 3) award such other and further relief as the Panel deems proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 30, 2005, the Panel denied Claimant's Motion to Preclude Respondent from Filing an Answer and Presenting Defenses.

On or about March 14, 2006, the Panel granted in part and denied in part Respondent's Motion to Dismiss. The Panel granted dismissal of Claimant's claims of wrongful termination of employment, punitive damages, and recovery for physical and emotional suffering. The Panel denied the Motion to Dismiss regarding any remaining allegations of the claim.

On or about June 15, 2006, the Panel denied as moot Claimant's Motion for Reconsideration of the Panel's Order on Respondent's Motion to Dismiss. Additionally, the Panel granted Claimant's Motion to Amend the Statement of Claim.

During the evidentiary hearing Respondent made an ore tenus motion to dismiss Claimant's claims which was denied by the Panel.

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, 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:

All claims for relief are denied. Any claims for relief, not specifically addressed herein, including Claimants' claim for punitive damages and the parties' claims for costs and 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	= \$500.00
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent is a party and a member firm.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

The July 11 –14, 2006 adjournment was requested by Respondent.

The Panel has assessed an adjournment fee of \$1,200.00 to Respondent.

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 assessed during these proceedings.

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.

There were no injunctive relief fees assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

Four (4) Pre-hearing sessions with Panel @ \$1,200.00/session = \$4,800.00

Pre-hearing conferences:	September 30, 2005	1 session
	June 12, 2006	1 session
	June 26, 2006	1 session
	July 6, 2006	1 session

Six (6) Hearing sessions @ \$1,200.00/session = \$7,200.00

Hearing Dates:	October 17, 2006	2 sessions
	October 18, 2006	2 sessions
	October 19, 2006	2 sessions

Total Forum Fees = \$12,000.00

The Panel has assessed \$6,000.00 of the forum fees to Claimant.

The Panel has assessed \$6,000.00 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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 6,000.00
Total Fees	= \$ 6,500.00
Less payments	= \$ 1,000.00
Balance Due NASD Dispute Resolution	= \$ 5,500.00

Respondent is solely liable for:

Member Fees	= \$ 8,550.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 6,000.00
Total Fees	= \$15,750.00

<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 7,200.00

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

ARBITRATION PANEL

Susanne J. Hollander, Esq.	-	Public Arbitrator, Presiding Chairperson
Marvin S. Lava, Esq.	-	Public Arbitrator
Sanford M. Naiditch	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Susanne J. Hollander, Esq.
Public Arbitrator, Presiding Chairperson

October 25, 2006
Signature Date

/s/
Marvin S. Lava, Esq.
Public Arbitrator

October 23, 2006
Signature Date

/s/
Sanford M. Naiditch
Non-Public Arbitrator

October 22, 2006
Signature Date

October 25, 2006

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

NASD Dispute Resolution
Arbitration No. 05-02495
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Sanford M. Naiditch	-	Non-Public Arbitrator

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Susanne J. Hollander, Esq.
Public Arbitrator, Presiding Chairperson

10/25/06
Signature Date

Marvin S. Lava, Esq.
Public Arbitrator

Signature Date

Sanford M. Naiditch
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution
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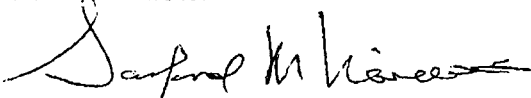
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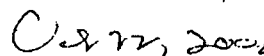
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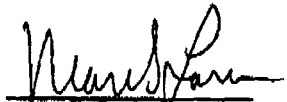
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Concurring Arbitrators' Signatures

Susanne J. Hollander, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Marvin S. Lava, Esq.
Public Arbitrator

10/23/06
Signature Date

Sanford M. Naiditch
Non-Public Arbitrator

Signature Date

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