

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

Jeremy S. Eaton

vs.

Case Number: 05-05009
Hearing Site: Chicago, Illinois

Names of Respondents

Merrill Lynch, Pierce, Fenner & Smith Inc.,
Timothy J. Cunningham, and
Jeffrey A. Zimmer

NATURE OF THE DISPUTE

Associated Person vs. Member and Associated Persons

REPRESENTATION OF PARTIES

Jeremy S. Eaton ("Claimant") was represented by John J. Muldoon, III, Esq., Muldoon & Muldoon, PC, Chicago, Illinois.

Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill"), Timothy J. Cunningham ("Cunningham"), and Jeffrey A. Zimmer ("Zimmer"), hereinafter collectively referred to as "Respondents," were represented by Carole G. Miller, Esq. and Theodore P. Bell, Esq., Maynard, Cooper & Gale, PC, Birmingham, Alabama.

CASE INFORMATION

The Statement of Claim was filed on or about September 26, 2005. The Submission Agreement of Claimant was signed on or about September 14, 2005.

The Statement of Answer was filed jointly by Respondents on or about November 17, 2005. The Submission Agreement of Merrill was signed on or about October 19, 2005 by Ellen Casey. The Submission Agreement of Cunningham was signed on or about November 9, 2005. The Submission Agreement of Zimmer was signed on or about November 16, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: defamation; wrongful termination; and failure to supervise. The causes of action related to Claimant's allegation that his employment was terminated following a specious investigation and that the information related to the termination on Claimant's Form U-5 was false and defamatory.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's defamation claim is barred because he failed to plead any facts supporting a claim of defamation; Claimant's claims are barred by the doctrine of laches; and Claimant's claims are barred by the Illinois employment "at-will" doctrine.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$ 200,000.00
Exemplary/Punitive Damages	\$ 300,000.00
Expungement	

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing, Cunningham and Zimmer requested expungement of all references to this matter from their CRD records.

At the hearing, Respondents moved for a directed finding or directed award for all three Respondents at the close of Claimant's case-in-chief. The Panel granted the motion as to Respondents Cunningham and Zimmer and denied the motion as to Respondent Merrill.

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 the 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, each and all, are hereby denied and dismissed with

prejudice;

- 2.) After considering the pleadings, the testimony, and the evidence presented at the hearing, the Panel has made the following finding of facts:

The claim, allegation, or information is clearly erroneous; and

The claim, allegation, or information is false.

Based on these findings, the Panel recommends the expungement of all references to this intra-industry arbitration claim be expunged from Respondents, Timothy J. Cunningham's and Jeffrey A. Zimmer's, registration records maintained by the NASD Central Registration Depository ("CRD") based on the defamatory nature of the information;

- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial Claim filing fee	= \$ 300.00
--------------------------	-------------

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 event giving rise to the dispute. In this matter, the member firm is Merrill Lynch, Pierce, Fenner & Smith Inc.

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

Forum Fees and Assessments

The Panel has assessed forum fees for each hearing 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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: January 30, 2006 1 session	
April 11, 2006 1 session	
Four (4) Hearing sessions x \$1,125.00	= \$ 4,500.00
Hearing Dates: January 16, 2007 2 sessions	
January 17, 2007 2 sessions	
Total Forum Fees	= \$ 6,750.00

The Panel has assessed \$6,750.00 of the forum fees to Jeremy S. Eaton.

FEE SUMMARY

Claimant, Jeremy S. Eaton, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 6,750.00
Total Fees	= \$ 7,050.00
<u>Less payments</u>	<u>= \$ 2,825.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,225.00

Respondent, Merrill Lynch, Pierce, Fenner & Smith Inc., is liable for:

<u>Member Fees</u>	<u>= \$ 5,200.00</u>
Total Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
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

James F. Carlson, Esq. - Public Arbitrator, Presiding Chair
John Fennig, Esq. - Public Arbitrator
Dwight R. Erskine, II, CFP - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ James F. Carlson, Esq.
James F. Carlson, Esq.
Public Arbitrator, Presiding Chair

January 27, 2007
Signature Date

/s/ John Fennig, Esq.
John Fennig, Esq.
Public Arbitrator

January 29, 2007
Signature Date

/s/ Dwight R. Erskine, II, CFP
Dwight R. Erskine, II, CFP
Non-Public Arbitrator

January 28, 2007
Signature Date

January 29, 2007
Date of Service (For NASD office use only)

ARBITRATION PANEL

James F. Carlson, Esq. - Public Arbitrator, Presiding Chair
John Fennig, Esq. - Public Arbitrator
Dwight R. Erskine, II, CFP - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

James F. Carlson, Esq.
James F. Carlson, Esq.
Public Arbitrator, Presiding Chair

01/27/07
Signature Date

John Fennig, Esq.
Public Arbitrator

Signature Date

Dwight R. Erskine, II, CFP
Non-Public Arbitrator

Signature Date

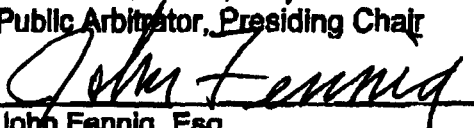
Date of Service (For NASD office use only)

ARBITRATION PANEL

James F. Carlson, Esq. - Public Arbitrator, Presiding Chair
John Fennig, Esq. - Public Arbitrator
Dwight R. Erskine, II, CFP - Non-Public Arbitrator

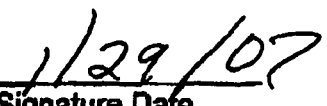
Concurring Arbitrators' Signatures:

James F. Carlson, Esq.
Public Arbitrator, Presiding Chair



John Fennig, Esq.
Public Arbitrator

Signature Date



Signature Date

Dwight R. Erskine, II, CFP
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

James F. Carlson, Esq. - Public Arbitrator, Presiding Chair
John Fennig, Esq. - Public Arbitrator
Dwight R. Erskine, II, CFP - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

James F. Carlson, Esq.
Public Arbitrator, Presiding Chair

Signature Date

John Fennig, Esq.
Public Arbitrator

Signature Date


Dwight R. Erskine, II, CFP
Non-Public Arbitrator

01/28/2007
Signature Date

Date of Service (For NASD office use only)