

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

Neil R. Hause

vs.

Case # 91-00900

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

REPRESENTATION

For Claimant, Neil R. Hause ("Claimant"), Richard W. Kearney, Esq.

For Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") Bryan G. Killiam, Esq. from the law firm Sherin and Lodgen.

CASE INFORMATION

Statement of Claim was filed on March 18, 1991.

Claimant's Submission Agreement was signed on February 28, 1991.

Merrill's Statement of Answer was dated on July 1, 1991.

Merrill did not execute a Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions:	September 15, 1992	-	2 sessions
	September 16, 1992	-	2 sessions
	October 20, 1992	-	2 sessions
	December 16, 1992	-	2 sessions
	September 15, 1993	-	1 session

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 260 Franklin Street, Boston, Massachusetts.

CASE SUMMARY

Claimant commenced this arbitration proceeding to recover damages as a result of Respondent's breach of contract, expressed and implied, with Claimant which ultimately caused Claimant to prematurely terminate his employment relationship with Merrill.

Claimant alleges that through his sole effort, he obtained a significant client investment account known as the George I. Alden Trust ("Trust") which was valued at \$48 million in 1985. Claimant also alleges that a contractual arrangement was established whereby the commissions generated by investment activities in the account would be divided between Claimant and Merrill's Vice President McCloskey ("McCloskey"). Claimant further alleges that as time progressed the commission arrangement was unilaterally changed from fifty/fifty to eventually seventy five/twenty five percent. Claimant alleges that, as a result of these unilateral changes, he became fearful that his failure to cooperate would lead to his immediate termination. Claimant contends that Merrill violated general duties of good faith and fair dealing. Claimant also contends that Merrill and its Vice President conspired to intentionally interfere with his economic relationship with the Trust and that such deliberate egregious conduct should lead to an award of punitive damages.

Respondent denies each and every allegation of wrongdoing contained in the Statement of Claim. Respondent interposes four affirmative defenses.

Respondent contends that shortly after Claimant, a very young and inexperienced broker, joined the Respondent broker/dealer, he learned that the Trustees of the George I. Alden Trust were considering changing brokers. Claimant sought the assistance of his manager, John E. Joyce ("Joyce"), who then contacted the Trustees. Respondent contends that Joyce, after a meeting with Trustees, and in response to Claimant's inquiry, indicated that the account could be obtained but that a more experienced broker would be brought in to work with Hause, to which Hause agreed. Respondent alleges that in a subsequent meeting with the representatives of the Trust, McCloskey and Joyce did virtually all of the talking while Claimant said little or nothing. Respondent states that as a result of this meeting, the Trust agreed to do business with Merrill through McClosky. Respondent contends that Joyce decided that since it was Claimant who made first contact with the Trust through a phone call, the commissions would be shared fifty/fifty for the first year and that subsequently commissions would be split based upon who did the work. Respondent contends that McClosky dealt with the Trustees on a day to day basis to determine what trades should be recommended while Claimant dealt with the administrators of the Trust to determine the proper mechanical way to effect trades; he was an order taker.

Respondent alleges that when it was determined that McClosky did most of the work the commission split was adjusted so that McClosky received sixty percent and Claimant received forty percent.

Respondent further stated that when it was discovered that McClosky did all the work and only received 60% of the commission the new branch manager, Charles Manzella, adjusted the split so that Claimant would receive the same amount for the next 18 months and after that twenty percent for as long as Manzella ran that office. Respondent contends that Claimant rejected this and terminated his employment and joined a competing securities firm while the Trust remained with Merrill.

RELIEF REQUESTED

Claimant requests an award of \$250,000.00 or fifty percent of any commissions generated or earned on securities transactions within the Trust's account from the date of the first breach, whichever is greater plus interest; compensatory, consequential damages; costs of this proceeding and reasonable attorney's fees as the arbitrator deem just and proper; and punitive damages.

Respondent requests that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant requested and obtained two postponements of the hearing previously scheduled for January 14 and 15, 1992 and April 15 and 16 1992. Claimant was assessed a \$750.00 fee for each postponement for a total of \$1,500.00

Claimant requested a postponement of the hearing that was scheduled for September 15, 1993 based upon the fact that Respondent failed to provide documents necessary to conclude the hearing. This panel denied the request but allowed Claimant an opportunity to provide a written closing statement in lieu of an oral closing statement after reviewing the documents provided by Respondent.

AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing, and post-hearing submission filed by the Claimant in lieu of closing statement, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims asserted by Claimant are denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed and shall be borne equally by the parties so that each party is assessed \$3,625.00.

Non-refundable Filing Fee: \$500.00

Hearing Session Fee(s): \$750.00 x 9 sessions = \$6,750.00

1. Claimant is further assess \$1,500.00 in postponement as discussed in the section entitled "Other Issues Considered and Decided."
2. Claimant is also assessed \$150.00 in costs for the duplication of tapes.
3. Claimant previously deposited \$2,150.00 and owes a balance of \$3,125.00.

Fees are payable to the National Association of Securities Dealers, Inc.

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ARBITRATION PANEL

John P. Hansen, Esq.	-	Industry Chairperson
Gerald H. Stanney	-	Industry Panelist
Elwynn J. Miller, Esq.	-	Industry Panelist

Concurring Arbitrator's Signature

John P. Hansen
John P. Hansen, Esq.

Date of Decision December 28, 1993

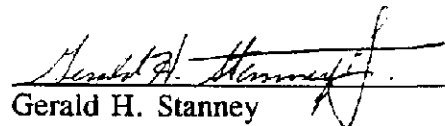
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Gerald H. Stanney

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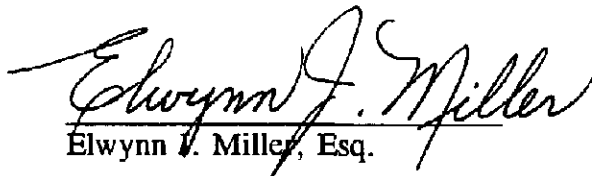
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Elwynn J. Miller, Esq.

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