

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Claimants

Stephen Michael Golding

91-03959

Respondents

Merrill, Lynch, Pierce, Fenner & Smith, Inc.  
Kidder, Peabody & Co., Inc.

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**REPRESENTATION**

For Claimant, Stephen Michael Golding ("Golding"): Jerome S. Reisman of Reisman & Abraham.

For Respondent: Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("M.L."); Keith Olin, Esq. of Morgan Lewis & Bockius.

For Respondent: Kidder, Peabody & Co., Inc. ("K.P."); Steven J. Mitchel, Esq. of Mitchel & Assoc., P.A.

**CASE INFORMATION**

Statement of Claim filed: 12/16/91.

Claimant's Submission Agreement signed on: 7/2/91.

Statement of Answer filed by Respondent, M.L. on: 3/30/92.

Respondent, M.L.'s Submission Agreement signed on: 3/25/92 by Thomas W. Smith, on behalf of M.L..

Statement of Answer filed by Respondent, K.P. on: 5/8/92.

Respondent, K.P.'s Submission Agreement signed on: 5/8/92 by Shelia A. Chervin on behalf of K.P.

**HEARING INFORMATION**

On 12/2/93 in Fort Lauderdale, Florida a hearing lasting 3 sessions was conducted.

**CASE SUMMARY**

Claimant Stephen Michael Golding, alleged that he was hired in June 1989 by K.P. at a promised salary of \$8,000 per month; that said salary was to be on a draw against commission basis but, Claimant was guarantied not less than \$8,000 per month for the first year; that Claimant worked for Respondent K.P. upon those terms from June 1989 through October 30, 1989; that Respondent K.P.'s Miami office was purchased by Respondent M.L. on October 30, 1989. Claimant further alleged that his salary was unilaterally reduced by M.L. to \$4,000 per month at that time. Claimant also alleged that as a result of the sale to M.L., he was unable to trade for his institutional clients further reducing his commission income. Claimant stated that the changes in income forced his resignation from M.L. in January, 1990.

Respondent, M.L., denied all allegations of wrongdoing and alleged that Claimant was an employee at will for which no employment contract existed. Respondent, M.L. claimed that the Claimant's salary was strictly a draw against commission and that it was justified in reducing Claimant's draw to \$4,000 per month. Respondent, M.L. further alleged that Claimant's commissions were insufficient to cover his salary and that Claimant was aware of the institutional trading restrictions when he accepted employment with M.L.. Respondent, M.L. also stated that Claimant failed to demonstrate any wrongdoing on the part of M.L. or its employees and that all claims against it are without basis. Respondent, M.L. set forth the affirmative defenses of: failure to state a claim, laches and statute of limitations.

Respondent, K.P., denied all allegations of wrongdoing and alleged that Claimant was an employee at will for which no employment contract existed. Respondent, K.P. admitted that the Claimant's salary was to be no less than \$8,000 per month during his first year but denied that K.P. had any obligation to retain Claimant as an employee for the entire year. Respondent, K.P. stated that it in fact paid Claimant's salary until he accepted employment with M.L.. Respondent, K.P. further stated that the Claimants acceptance of employment with M.L. relieved it of any obligation to pay his salary.

**RELIEF REQUESTED**

Claimant requested: actual damages in the amount of \$750,000.00, punitive damages in the amount of \$1,500,000.00 plus interest costs and reasonable attorneys fees.

Respondents requested: dismissal of all claims and assessment of costs against the Claimant.

**OTHER ISSUES CONSIDERED & DECIDED**

- 1) Jurisdiction in this case was lawfully delegated to the NASD by the U.S. District Court for the Southern District of Florida on 4/5/91.
- 2) 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remains on file with the NASD.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent, M.L., is found liable and shall pay to the Claimant, damages in the amount of \$28,000.00, including interest.
- 2) Respondent, K.P., is found not liable and therefore all claims against it are hereby dismissed.
- 3) Claimant's request for punitive damages is hereby denied.
- 4) Claimant's requests for expenses and attorneys' fees are hereby denied.

**OTHER COSTS**

The parties shall each bear all costs and expenses incurred by them in connection with this proceeding, including attorneys' fees.

**FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (three (3) hearing sessions X \$1,000.00).

1) Respondents, M.L. and K.P. are hereby jointly and severally assessed forum fees in the amount of \$3,000.00 \$1,000.00 of which shall be paid directly to the Claimant and \$2,000.00 to be paid to the National Association of Securities Dealers, Inc.

2) The NASD shall retain the \$500.00 non refundable filing fee paid by the Claimant.

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures:**

Name

Public/Industry

/s/

Anthony S. Paetro, Esq.

Industry/Chairman

/s/

Richard M. Kowalske

Industry/Panelist

/s/

Nicholas A. Natale

Industry/Panelist

Date of Decision:

1/26/94