

**AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimants

Ernest D. (Bud) Olson

92-01158

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith Inc  
Michael Putnam

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REPRESENTATION

Claimant was represented by A. Russell Janklow, Esq. of Johnson, Heidepriem, Miner & Marlow of Sioux Falls, SD and John E. Burke, Esq. of Sioux Falls, SD.

Respondents were represented by Steven R. Anderson, Esq. and Charles F. Knapp, Esq. of Faegre & Benson located in Minneapolis, MN.

CASE INFORMATION

Statement of Claim was filed by Claimant Ernest D. (Bud) Olson on or about April 2, 1992.

Claimant's Submission Agreement was signed on March 23, 1992.

Statement of Joint and Separate Answer was filed by Merrill Lynch, Pierce, Fenner & Smith and Michael Putnam on or about May 27, 1992.

Respondent Merrill Lynch, Pierce, Fenner & Smith's Submission Agreement was signed on May 5, 1992 by Christine O'Merriman of Merrill Lynch, Pierce, Fenner & Smith.

Respondent Michael Putnam's Submission Agreement was signed on May 15, 1992.

HEARING INFORMATION

Hearing Dates were July 16, 1996 for two (2) sessions, July 17, 1996 for two (2) sessions, July 18, 1996 for two (2) sessions, September 4, 1996 for two (2) sessions, September 5, 1996 for two (2) sessions, September 6, 1996 for two (2) sessions, for a total of twelve (12) sessions.

Hearing Location was Minneapolis, MN.

#### CASE SUMMARY

Claimant Ernest D. (Bud) Olson ("Claimant"), alleged that his former employer, Merrill Lynch, Pierce, Fenner & Smith and Michael Putnam ("Respondents") discriminated against him based upon his age. Specifically, Claimant alleged that the Respondents' decision to remove him as the Resident Manager of its Sioux Falls office constituted age discrimination under the Federal Age Discrimination in Employment Act. Claimant further claimed that the Respondents' decision to reduce his monthly draw and remove him as Resident Manager constituted unlawful retaliation against him. Claimant also alleged breach of contract, intentional infliction of emotional distress and tortious interference with business relations.

Respondents denied the allegations set forth in the Statement of Claim and stated that the Claimant's allegations lacked merit as a matter of both fact and law. Respondents also asserted affirmative defenses including failure to state a claim on which relief could be granted and lack of subject matter jurisdiction for age discrimination and retaliation claims.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$120,000.00 per year of salary plus \$40,000.00 per year of bonus for a total of \$160,000.00 per year for 14 years totaling \$2,240,000.00. Claimant also sought double the amount of the calculated damages, punitive damages in the amount of \$2,500,000.00 liquidated damages, and attorneys fees and costs.

Respondents requested that the Statement of Claim be dismissed. Respondents also requested that Claimant be ordered to reimburse them for their costs and attorneys' fees in defending this arbitration proceeding.

#### OTHER ISSUES CONSIDERED & DECIDED

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 remain on file with the NASD.

#### AWARD

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

- (1). That Respondent Merrill Lynch, Pierce, Fenner & Smith is liable for and shall pay Claimant Ernest D. (Bud) Olson the amount of \$1,800,000.00 (one million eight hundred thousand dollars and no cents) in damages under the Federal Age Discrimination in Employment Act;
- (2). That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded are, and each of them, hereby denied with prejudice.

FORUM FEES

Pursuant to Section 10332c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

12 sessions X \$1,000.00 = \$12,000.00 minus hearing session deposit of \$1,000.00 = net \$11,000.00 due. The forum fees are to be split equally between the parties. Therefore, Claimant is liable for and shall pay forum fees in the amount of \$5,000.00 and Respondents are jointly and severally liable for and shall pay \$6,000.00 in forum fees. In addition, Respondent Merrill Lynch, Pierce, Fenner & Smith shall pay its Section 10333 member surcharge in the amount of \$500.00.

Forum Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

Name	Date
/s/ Lee H. Goodman _____ Lee H. Goodman Public Arbitrator Chairperson	11-12-96 _____
/s/ Mary Beth Wheeler _____ Mary Beth Wheeler Public Arbitrator	11-14-96 _____

Dissenting Arbitrator's signature:

/s/ Kieran Ridge _____ Kieran Ridge Industry Arbitrator	11-13-96 _____
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Date of Service: November 18, 1996