

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Merrill Lynch, Pierce, Fenner
& Smith, Inc.

NASD Arbitration
No. 92-02753

Name of Respondent(s)

Steven O. Sparks

REPRESENTATION

For Claimant: Thomas L. Taylor, Esq. and Victoria S. Shabanian,
Esq., Jones, Bell, Simpson & Abbott, Los Angeles, California

For Respondent: H Thomas Fehn, Esq., Fields, Fehn & Sherwin, Los
Angeles, California

CASE INFORMATION

Statement of Claim filed: August 14, 1992

Claimant's Reply to Counterclaims filed: November 23, 1992

Claimant's Submission Agreement signed: August 12, 1992

Statement of Answer, Notice of Counterclaims and Statement of
Counterclaims filed by Respondent: October 27, 1992

Respondent's Submission Agreement signed: October 27, 1992

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

August 9, 1994 (one session)

Hearing Date(s)/Session(s): January 18, 1995 (two sessions)
January 19, 1995 (two sessions)
March 16, 1995 (two sessions)
March 23, 1995 (one session)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. (Merrill Lynch) alleged that Respondent Steven O. Sparks (Sparks) breached the terms of his Employment Agreement (Agreement) and Promissory Note executed August 15, 1991.

Respondent Sparks denied any liability to Merrill Lynch and further denied that he is under any obligation to pay back the entire sum of \$80,100.00 requested by Merrill Lynch in its Statement of Claim. Mr. Sparks also asserted affirmative defenses. In his Counterclaim, Mr. Sparks alleged that he performed all conditions and covenants required on his part under the Agreement, except as excused or prevented by Merrill Lynch and further alleged that Merrill Lynch breached its obligations under the terms of the Agreement. Mr. Sparks further alleged that the misconduct on the part of Merrill Lynch, proximately caused, and continues to cause, extensive damage to Mr. Sparks in an amount to be determined at the arbitration which is in excess of \$500,000.00.

Merrill Lynch denied the allegations of wrongdoing set forth in the Counterclaim by Mr. Sparks and denied that it breached the Agreement in any material respect or at all. Merrill Lynch also asserted affirmative defenses.

RELIEF REQUESTED

Referencing the Statement of Claim, Merrill Lynch requested:

1. \$80,100.00 plus interest at 8% per annum from August 16, 1991 to the date of the arbitration award;
2. Attorney's fees;
3. Costs and disbursements; and
4. Any and all further relief that the panel deems just and proper.

Referencing the Counterclaim, Merrill Lynch requested:

1. That Merrill Lynch be granted all relief sought in its Statement of Claim;
2. That Mr. Sparks take nothing by reason of his Counterclaim and that the same be dismissed with prejudice;
3. Attorney's fees and costs; and
4. Such other and further relief as the arbitration panel deems just and proper.

Referencing the Statement of Claim, Mr. Sparks requested:

1. That Merrill Lynch take nothing by its Statement of Claim and dismissal of the proceeding brought by Merrill Lynch; and
2. Attorney's fees and costs.

Referencing the Counterclaim, Mr. Sparks requested:

1. Damages in an amount in excess of \$500,000.00 according to proof at the arbitration;
2. That Merrill Lynch be ordered to immediately cease and desist all misconduct described in the Counterclaim;
3. Attorney's fees and costs; and
4. Such other and further relief as the arbitrators deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (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. The panel found merit in both the Statement of Claim and Counterclaim and determined that Claimant Merrill Lynch's damages exceeded Respondent Sparks' damages by the sum of \$1,000.00 and therefore awards Claimant Merrill Lynch that amount.

2. As the prevailing party, Claimant Merrill Lynch shall recover from Respondent Sparks the sum of \$25,000.00 to cover Claimant Merrill Lynch's costs, attorneys' fees and interest pursuant to the terms of the Promissory Note.

3. No sum is awarded with respect to the Counterclaim of Respondent Sparks.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$600.00 hearing session deposit previously deposited by Merrill Lynch. Forum fees are to be split between the parties and are calculated as follows:

One pre-hearing session @ \$300.00/session	=	\$ 300.00
Seven hearing sessions @ \$600.00/session	=	<u>\$4,200.00</u>
Total fees assessed	=	\$4,500.00
Claimant Merrill Lynch's share (50%)	=	\$2,250.00
Credit for hearing deposit	=	\$ 600.00
Balance due	=	\$1,650.00
Respondent Sparks' share (50%)	=	\$2,250.00
Balance due	=	\$2,250.00

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

ARBITRATORS

Name Public / Industry

Donald S. Simons, Esq.	Public Arbitrator
Homer L. White	Public Arbitrator
Milton C. Bennett	Industry Arbitrator

Concurring Arbitrators' Signatures

Donald S. Simons

Donald S. Simons, Esq.

Homer L. White

Milton C. Bennett

Served 5/1/95

Date of Decision:

4/20/95

Concurring Arbitrators' Signatures

Donald S. Simons, Esq.

Homer L. White
Homer L. White

Milton C. Bennett

Served 5/1/95

Date of Decision: 03-30-95

Concurring Arbitrators' Signatures

Donald S. Simons, Esq.

Homer L. White

M C Bennett

Milton C. Bennett

Served 5/1/95

Date of Decision: _____