

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

James B. Korndorffer

92-02913

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.;  
Merrill Lynch Life Agency, Inc.

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**REPRESENTATION**

For Claimant: James B. Korndorffer ("Korndorffer") was represented by Joe Sam Owen, Esq. and Joe C. Gewin, Esq. of Owen, Galloway & Clark, in Gulfport, Mississippi.

For Respondent: Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Merrill Lynch Life Agency, Inc. ("Merrill Lynch Life") were represented by Paul J. Delcambre, Jr., Esq. of Aultman, Tyner, McNeese & Ruffin, Ltd., Gulfport, Mississippi.

**CASE INFORMATION**

Statement of Claim filed: August 31, 1992..

Claimant's Submission Agreement signed on: August 14, 1992.

Joint Statement of Answer filed by Respondents on: November 2, 1992.

Respondent Merrill Lynch's Submission Agreement signed on: October 28, 1992 by Thomas W. Smith, Merrill Lynch, Pierce, Fenner & Smith, Inc.

**HEARING INFORMATION**

Pre-Hearing Conference: April 28, 1993 for One (1) session before One (1) arbitrator;  
April 29, 1993 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: September 29, 1993 for Two (2) sessions;  
September 30, 1993 for Two (2) sessions;  
November 22, 1993 for Two (2) sessions.

Hearing Location: New Orleans, Louisiana.

### **CASE SUMMARY**

Claimant Korndorffer alleged that he was terminated without cause from his employment as Regional Insurance Manager of Respondent Merrill Lynch Life on April 27, 1990 and replaced by a younger and less experienced person. Based upon this allegation, Korndorffer claimed that Merrill Lynch Life discriminated against him because of his age.

Respondents denied the material allegations of the Statement of Claim, alleging that Korndorffer was terminated because of a reorganization of the corporate structure and a reduction in the number of Regional Insurance Managers from twelve to eight. Merrill Lynch Life asserted that Korndorffer was selected as one of the managers to be reduced to a Territorial Insurance Specialist because of unsatisfactory job performance, including his failure to develop a rapport with the Branch Managers in his region, his failure to reside in his region and his failure to work from the Dallas, Texas office, and therefore, his termination was for just cause and not for any discriminatory purpose. In addition, the Respondents asserted the following affirmative defenses:

1. Merrill Lynch was not an employer of Korndorffer as that term is defined in 29 U.S.C. Sec. 630 (Age Discrimination and Employment Act), and is therefore not a proper party Respondent;
2. Korndorffer failed to timely file a charge of discrimination against Merrill Lynch and Merrill Lynch Life within 180 days of the date of the alleged act of discrimination as required as a prerequisite to the pursuit of any action against the Respondents; and
3. The action is barred by the applicable statute of limitations.

### **RELIEF REQUESTED**

Claimant Korndorffer requested entry of an award against Respondents for compensatory damages pursuant to 29 U.S.C. Sec. 621, *et seq.*, and 19 U.S.C. Sections 216 and 217 for past and future compensation and wages, including fringe and pension benefits; punitive damages; and reasonable attorneys' fees and costs. In addition, Korndorffer requested entry of an order compelling Respondents to rehire Korndorffer at the same or comparable position he held prior

to his termination, at the same salary, and with all back pay and benefits due him.

Respondents requested that the relief demanded by the Claimant's Statement of Claim be denied.

### **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. The Statement of Claim is hereby dismissed and denied in its entirety; and
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

### **OTHER COSTS**

The NASD shall retain all postponement fees paid by the parties in this action.

### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) pre-hearing conference sessions with One (1) arbitrator x \$300.00 per session = \$600.00; Six (6) hearing sessions x \$600.00 per session = \$3,600.00; Total forum fees = \$4,200.00.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 non-refundable claim filing fee and refund the \$1,250.00 hearing session deposit previously deposited by the Claimant, James R. Korndorffer. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Merrill Lynch Life Agency are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$4,200.00.

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

Concurring Arbitrators' Signatures

Name

Date

s/s Stephen H. Kupperman, Esq.  
Stephen H. Kupperman, Esq.  
Industry Arbitrator  
Chairperson

January 5, 1994

s/s Cheryl D. Cassreino  
Cheryl D. Cassreino  
Industry Arbitrator

January 6, 1994

s/s John R. Atchley  
John R. Atchley  
Industry Arbitrator

January 5, 1994

For NASD Use Only

Date of Service of Award: 1-14-94