

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Kelli Lyn Metz

No. 92-02955

Name of Respondent

Merrill Lynch, Pierce, Fenner
& Smith, Inc.

REPRESENTATION OF PARTIES

For Claimant: Jim T. Priest, Esq. and Dixie L. Coffey, Esq., of
McKinney, Stringer & Webster P.C., Oklahoma City, Oklahoma.

For Respondent: Bruce W. Day, Esq. and Rodney J. Heggy, Esq., of
Day, Hewett & Federman, Oklahoma City, Oklahoma.

CASE INFORMATION

Statement of Claim filed on or about: August 31, 1992.

Claimant's Submission Agreement signed: August 26, 1992.

Respondent's Statement of Answer filed on or about: DECEMBER 16,
1993.

Respondent's Submission Agreement signed: December, 1992.

HEARING INFORMATION

Pre-Hearing conference date: June 22, 1993. One (1) session.

Hearing dates: October 6, 1993. Two (2) sessions.
October 7, 1993. One (1) session.

Hearing Location: Oklahoma City, Oklahoma.

CASE SUMMARY

Claimant, Kelli Lyn Metz ("Claimant") alleged that Respondent, Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") wrongfully discharged her because of her pregnancy in violation of established public policy and common law in the State of Oklahoma. Claimant further alleged that Respondent's malicious and oppressive conduct evidenced a disregard for Claimant's rights.

Respondent denied the allegations contained in the Statement of Claim. Respondent asserted that the parties had a basic agreement concerning the centrality of production, and Claimant's failure to produce, and termination for lack of production was "per se" reasonable. Respondent also asserted that: In 1988, the year of Claimant's termination, her production did not cover her draws; Claimant disobeyed specific instructions to "bust a trade" involving a certificate of deposit customer; and Mr. Ellis' decision to fire the Claimant had been based upon Claimant's production, brief and erratic office hours, lack of prospecting, and "lack of focus."

RELIEF REQUESTED

Claimant requested damages in excess of \$50,000.00.

Respondent requested that the panel delay this matter until the United States Court of Appeals for the Tenth Circuit rules. The Respondent further requested that, if and when the matter proceeds, Claimant is not entitled to any relief pursuant to ERISA, Title VII or the Common Law of Oklahoma.

OTHER ISSUES CONSIDERED & DECIDED

Respondent did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 8 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing and therefore is bound by the determination of the panel on all issues submitted.

On April 6, 1993, Respondent filed a Request for Preliminary Hearing and Motion to Stay pending the ruling of the United States Court of Appeals for the Tenth Circuit on the arbitrability of Claimant's Title VII claim. After viewing the parties' submissions, and hearing argument, the panel denied the request and ordered the hearing to proceed on all other counts.

During the course of the hearing, Respondent requested that if the pending federal case is remanded by the Tenth Circuit Court of Appeals for arbitration that this same panel of arbitrators consider that claim. The Claimant had no objection, and the panel agreed to the request.

The parties have agreed that the Award in this matter may be executed by 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 original(s) remain on file with the NASD.

AWARD

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

1. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for, and shall pay to Claimant, Kelli Lyn Metz, the sum of \$5,000.00 as satisfaction of all claims presented to this panel.

OTHER COSTS

Each party shall pay their own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth below.

FORUM FEES

Pursuant to Section 44(c) of the Code, the following forum fees are assessed:

1 pre-hearing conference sessions x \$300.00 = \$300.00

3 hearing sessions x \$600.00 = \$1,800.00

Pursuant to Section 44(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$500.00, and shall retain the hearing session deposit in the amount of \$600.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$1,500.00 are assessed

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against the Claimant.

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

CONCURRING ARBITRATORS

Dated:

Name:

November 11, 1993

/s/Michael R. Prescott
Michael R. Prescott
Presiding Chair
Industry Arbitrator

November 12, 1993

/s/Mel James
Mel James
Industry Arbitrator

November 11, 1993

/s/Clinton K. Mason
Clinton K. Mason
Industry Arbitrator

Date of Service by the NASD: _____