

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Merrill Lynch, Pierce Fenner & Smith Inc

92-03715

Name of Respondent

Joel A. Nelson

REPRESENTATION

For Claimant at the hearing: Eileen McNerney, Esq. of Merrill Lynch Pierce Fenner & Smith, Inc., New York, New York.

For Respondent at the hearing: James H. Kaster, Esq. of Nichols Kaster & Anderson, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: November 2, 1992. Claimant's Submission Agreement signed on: October 23 1992.

Statement of Answer filed by Respondent on: January 7, 1993. Respondent's Submission Agreement signed on: January 25, 1993.

HEARING INFORMATION

Pre-hearing conference date/session: October 28, 1993 for one (1) session with the Chairperson only.

Hearing Date/Sessions: November 17, 1993 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimant Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") alleged that Respondent Joel Nelson ("Nelson") owes them money, pursuant to Merrill Lynch's Financial Consultant Trainee Agreement, after he voluntarily resigned from his employment with Merrill Lynch.

Respondent Nelson alleged that the agreement was not provided to him for his signature until after he was hired by Merrill Lynch. Nelson further alleged that the subject of the dispute is paragraph seven of the agreement for the following reasons: 1. Paragraph seven is void because Merrill Lynch did not provide consideration to support Nelson's promise to pay for training he never received; 2. Paragraph seven is void and unconscionable and contrary to public policy; 3. Nelson did not breach paragraph seven because Merrill Lynch constructively discharged Nelson without cause; and 4. Paragraph seven is void as a penalty.

RELIEF REQUESTED

Claimant requested the amount of \$28,500.00 plus costs and disbursements.

Respondent requested that the claim be dismissed and that costs be awarded to him.

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 arbitrator have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Joel Nelson, shall be and hereby is liable for, and shall pay to the Claimant, Merrill Lynch, Pierce Fenner & Smith, Inc., the amount of Twenty Eight Thousand Five Hundred Dollars and No Cents (\$28,500.00);
2. Each of the parties shall bear their own costs and expenses incurred other than those specifically set forth below under Forum Fees.

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 sessions X \$600 = \$1200 minus hearing session deposit of \$600 = \$600.00
plus \$300 for the pre-hearing conference session = net \$900 due.

The additional forum fees assessed by the panel are assessed against Claimant, Merrill Lynch, Pierce Fenner & Smith, Inc. in the amount of \$450 and against Respondent Joel Nelson in the amount of \$450.

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

By The Arbitration Panel:

Dated:

1-12-94

s/s David M. Ginter
David M. Ginter
Presiding, Industry Arbitrator

1-14-94

s/s Bruce W. Hebel
Bruce W. Hebel
Industry Arbitrator

1-14-94

s/s Annette W. Minor, Esq.
Annette W. Minor, Esq.
Industry Arbitrator

Date Award Served By The NASD: 1-24-94