

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

Laura O'Brien

93-00925

Name of Respondent

Merrill Lynch, Pierce Fenner & Smith, Inc.

REPRESENTATION

For Claimant Laura O'Brien ("Claimant") appeared Gerard McEnery, Esq. from the law firm of Cotter, Cotter & Sohon located in Bridgeport, Ct.

For Respondent Merrill Lynch, Pierce Fenner & Smith, Inc. ("Respondent") appeared Bernard E. Jacques, Esq. from the law firm of Wiggin & Dana located in Hartford, Ct.

CASE INFORMATION

Statement of Claim filed: February 26, 1993.

Claimant's Submission Agreement signed on: February 23, 1993.

Respondent's Statement of Answer filed: May 17, 1993.

Respondent's Submission Agreement signed on: June 22, 1993.

HEARING INFORMATION

Hearing Dates/Sessions:	February 9, 1994	-	One Session
	September 26, 1994	-	Two Sessions
	September 27, 1994	-	Two Sessions

The hearings were held at the National Association of Securities Dealers, Inc.'s offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that from February 17, 1981 to October 5, 1992 she was an employee in good standing at Respondent's New Canaan, Connecticut office and that, during this period, she was provided with employment manuals which were the basis of an employment contract between the parties. Claimant further alleged that at sometime prior to October 5, 1992 she had informed her superiors of wrongful and potentially illegal acts being committed by fellow employees at Respondent's New Canaan office and alleged that as a result of bringing forth this information Respondent wrongfully terminated her on or about October 5, 1992 in violation of her employment contract.

In addition, Claimant alleged that Respondent's actions violated the covenant of good faith and fair dealing between the parties, public policy, the Connecticut Unfair Trade Practices Act and Connecticut's General Statutes Section 31-51m. Claimant also alleged that as a result of Respondent's actions she has suffered emotional distress and an inability to earn a living.

Respondent denied that it wrongfully terminated Claimant and maintained that Claimant was an at-will employee who could be terminated at any time. In addition, Respondent maintained that Claimant had failed to state a claim upon which relief may be sought, that the Connecticut Unfair Trade Practices Act is inapplicable in employment disputes and that Claimant failed to allege the essential elements necessary for a claim under Connecticut's General Statute Section 31-51m.

RELIEF REQUESTED

Claimant requested damages in the amount of \$56,000 representing her lost income for two years, the reinstatement of her job with all benefits due and owing, attorneys fees, interest and costs. In addition, Claimant requested that Respondent amend her U-5 Uniform Termination notice to delete the statement that she was fired for failing to conform to firm standards.

Respondent denied all allegations and requested that the claims be dismissed.

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. All claims against the Respondent be and hereby are dismissed in their entirety.
2. Each party shall bear their respective costs, including attorney's fees.
3. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 44(e) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$250.00 filing fee and the \$600.00 hearing session deposit and have assessed the following forum fees:

5 Sessions X \$600.00 = \$3000.00 minus Claimant's hearing session deposit of \$600.00 = net \$2400.00 due.

The forum fees are assessed against:

1. Claimant be and hereby is liable and shall pay to the NASD the sum of \$1200.00 representing one-half of the outstanding forum fees.
2. Respondent be and hereby is liable and shall pay to the NASD the sum of \$1200.00 representing one-half of the outstanding forum fees.

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

ARBITRATORS' SIGNATURES

Lawrence S. Leibowitz, Esq.
Chairperson-Industry Arbitrator

Robert L. Palleschi
Industry Arbitrator

Matthew J. Tolan
Industry Panelist

Date of Decision: _____

STATE OF:

COUNTY OF: **ss:**

On this day , 1994, before me personally appeared **Lawrence S. Leibowitz, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

COUNTY OF: **ss:**

On this day , 1994, before me personally appeared **Robert L. Palleschi.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

COUNTY OF: **ss:**

On this day , 1994, before me personally appeared **Matthew J. Tolan** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

93-00925

Laura O'Brien

Claimant(s)

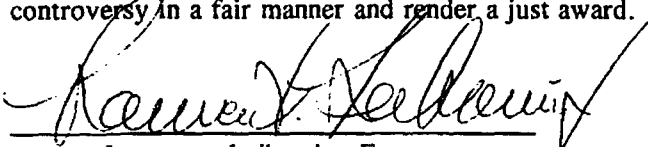
vs.

Merrill Lynch Pierce Fenner & Smith Inc

Respondent(s)

OATH
OF
ARBITRATOR

Having been selected as an arbitrator to consider the matter in controversy between the above-captioned parties, I solemnly swear and affirm that I am not an employer of, employed by, or related by blood or marriage to any of the parties or witnesses whose names have been disclosed to me; that I have no direct or indirect interest in this matter; I know of no existing or past financial, business, professional, family or social relationship which would impair me from performing my duties; and that I will decide the controversy in a fair manner and render a just award.


Lawrence Leibowitz, Esq.

STATE OF New York ss.:

COUNTY OF New York

On this 13th day of January 19 94, before me personally appeared Lawrence Leibowitz, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



LC25A

SEAN C. REILLY
Notary Public, State of New York
No. 4990919
Qualified in Kings County
Certificate Filed in New York County
Commission Expires January 21, 1994