

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

David R. DiCenso

vs.

Case No.
93-03504

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Lynne Ellen Larson
Arthur Edward Rozzero
Robert Baker Shaffer, II

REPRESENTATION

For Claimant, David DiCenso, ("Claimant"), William Filippo, Esq. from the law firm of John N. Calvino Law Associates located in Providence, Rhode Island.

For Respondents, Merrill Lynch Pierce Fenner & Smith, Inc., ("Merrill Lynch"), Lynne Ellen Larson, ("Larson"), Arthur Edward Rozzero, ("Rozzero") and Robert Baker Shaffer II, ("Shaffer"), Stephen M. Prignano, Esq. from the law firm of Edwards & Angell located in Providence, Rhode Island.

CASE INFORMATION

Statement of Claim was filed on September 7, 1993.

Claimant's Submission Agreement was signed on September 3, 1993.

Joint Statement of Answer was filed by Respondents Merrill Lynch, Larson, Rozzero and Shaffer (collectively "Respondents") on November 5, 1993.

Respondents', Merrill Lynch, Larson and Rozzero's, Submission Agreement was signed on November 4, 1993.

Respondent Shaffer's Submission Agreement was signed on December 7, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: August 3, 1994 - 2 sessions

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|-----------------|---|------------|
| August 4, 1994 | - | 2 sessions |
| August 22, 1994 | - | 2 sessions |

Hearing Location: The NASD offices located in Boston, Massachusetts.

CASE SUMMARY

Claimant commenced this six count claim seeking damages under the following theories: defamation; tortious interference with perspective contractual relations; breach of implied covenants of good faith and fair dealing; intentional infliction of emotional distress; invasion of right to privacy and intentional interference with contractual relations.

Claimant alleges that, pursuant to an employment contract, he became a financial consultant broker for Merrill Lynch. He states that on December 12, 1991, his supervisor, Shaffer, stated Claimant sexually harassed Larsen, another financial consultant, in the workplace. Claimant further alleges that he denied such allegations and that Larsen and Rozzero, another employee, acted individually and in concert to have Claimant fired. Claimant states that Respondents circulated and published such allegations throughout the Providence office and other investment brokerage firms in the Providence area. Claimant asserts that this adversely affected his ability to procure like employment. Claimant alleges that Respondents' actions caused harm to his reputation in the industry and confidence in his ability as a stockbroker. He claims that Respondents' actions were willful, intentional, and malicious.

Respondents alleges that Claimant engaged in a pattern of harassment toward certain employees of Merrill Lynch, in violation of Merrill Lynch's standards of conduct. Respondents allege that Claimant did not deny any allegations of general harassment, but he did deny the sexual harassment allegations. On December 13, 1991, as a result of these incidents, Respondents terminated Claimant. Further, Respondents deny that they circulated or published to any other individual or entity outside Merrill Lynch, the facts related to Claimant's termination. Respondents assert that they acted in good faith, deny that the damages suffered by Claimant were proximately caused by the Respondents and deny any acts of conspiracy.

RELIEF REQUESTED

Claimant requests monetary relief in the amount of \$500,000.00.

Respondents requested that the claims be denied.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and agreed to receive conformed copies of the Award while the original remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All counts raised by Claimant except for Breach of Implied Covenants of Good Faith and Fair Dealing are dismissed.
2. Claimant is awarded **TWENTY FIVE THOUSAND DOLLARS AND ZERO CENTS(\$25,000.00)** to be charged jointly and severally against Respondents, Merrill Lynch and Robert Shaffer, II.
3. The claim for attorney's fees is denied.
4. Respondents Merrill Lynch and Robert Shaffer, II are jointly and severally liable for all forum fees including reimbursing the Claimant for amounts he has paid.

FORUM FEES

Pursuant to Section 44(c) of the *Code of Arbitration Procedure*, the following Forum Fee(s) are assessed.

Non-refundable Filing Fee - \$500.00
Hearing Session Fees - \$4,500.00
Total Fees = \$5,000.00

1. Claimant previously paid \$1,250.00 and is entitled to a refund in that amount.
2. Forum Fees are jointly and severally against Merrill Lynch and Shaffer who shall satisfy the fees assessed by reimbursing Claimant \$1,250.00 and by remitting the balance \$3,250.00 to the NASD.

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

ARBITRATION PANEL

| | | |
|-------------------------|---|--------------------|
| June Y. Kilmarx, Esq. | - | Public Chairperson |
| William M. Prifti, Esq. | - | Public Panelist |
| Lowell A. Warren, Jr. | - | Industry Panelist |

Concurring Arbitrator's Signature


June Y. Kilmarx, Esq.

Date of Decision: October 25, 1994

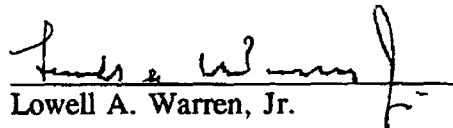
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Concurring Arbitrator's Signature

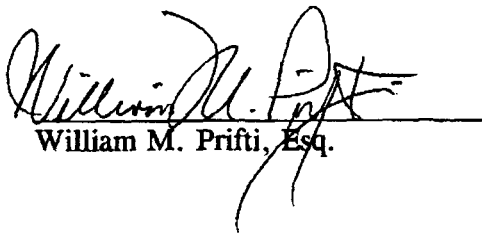

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Concurring Arbitrator's Signature


William M. Prifti, Esq.

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