

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between :

Paul D. Svigos

vs.

Case No. 93-04516

Hearing Location: Chicago, Illinois

Merrill Lynch Pierce Fenner & Smith Inc.

REPRESENTATION OF PARTIES

Claimant Paul D. Svigos ("Svigos") was represented by Jeffrey L. Liddle, Esq. of Liddle & Robinson, located in New York, New York.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") was represented by Peter A. Cantwell, Esq. of Cantwell & Cantwell, located in Chicago, Illinois.

CASE INFORMATION

Claimant's Statement of Claim filed on or about November 1, 1993;
Claimant signed the Uniform Submission Agreement October 28, 1993;
Respondent signed the Uniform Submission Agreement January 26, 1994;
Respondent filed its Answer and Affirmative Defenses on or about February 1, 1994;
Respondent filed a Motion to Dismiss on or about May 19, 1994;
Claimant filed an Opposition to the Motion to Dismiss on or about December 20, 1994;
Respondent filed a Reply to Claimant's Opposition to Motion to Dismiss on or about July 17, 1995;
Respondent filed a Supplement to its Reply to Claimant's Opposition to Motion to Dismiss on or about July 25, 1995;
On May 3, 1996, Claimant was granted leave to file an Amended Statement of Claim;
Claimant filed an Amended Statement of Claim on or about May 10, 1996;
Respondent filed a Motion to Dismiss on or about May 17, 1996;
Claimant filed a Response to Respondent's Motion to Dismiss on or about May 23, 1996;
respondent filed an Answer to Amended Statement of Claim and Affirmative Defenses on or about June 14, 1996;
Claimant filed a Clarification of his Amended Statement of Claim by letter on February 6, 1997;
By letter of June 10, 1997, Respondent filed a Response to Claimant's Clarification.

CASE SUMMARY

Claimant, Paul Svigos, asserted causes of action, including: defamation; tortious interference with prospective economic advantage; intentional infliction of emotional distress; wrongful termination; retaliatory discharge under Illinois common law; and wrongful termination in violation of ERISA. The causes of action relate to the termination of Claimant's employment with Respondent and statements that Respondent made on Claimant's U-5.

Unless specifically admitted in its Answer, Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted affirmative defenses including: Claimant fails to state a claim upon which relief can be granted; all statements Respondent made on the Form U-5 or in the internal memo were true; the Form U-5 was prepared in connection with a quasi-judicial proceeding, and any statements contained therein were absolutely privileged; Respondent's statements on the Form U-5 and/or the internal memo were fairly made in the discharge of Respondent's public legal duty and in the conduct of its own affairs in a matter where its interest was concerned, and are therefore subject to qualified privilege. Further, any statements Respondent made on the Form U-5 and/or in its internal memo, with the words and implications thereof, given their natural and obvious meaning, may be innocently interpreted, are non-defamatory and non-actionable.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 10,000,000.00
Punitive Damages	\$ 10,000,000.00
Interest	\$ prejudgment interest
Attorneys' Fees	\$ amount unspecified until hearing
Other Costs	\$ amount unspecified until hearing
Other Monetary/Non-Monetary Relief if any:	Order corrected Form U-5
Sanctions	\$ For misconduct in document production

Respondent requested that the statements on the Form U-5 be subject to an absolute or qualified privilege; that these same statements be found non-defamatory; that Claimant was terminated for just cause; that the panel find that the Claimant is entitled to no damages and that Merrill Lynch be awarded all costs for defending this claim.

OTHER ISSUES CONSIDERED AND DECIDED

At the close of Claimant's case, Respondent presented a Motion to Dismiss. Upon which, the panel heard oral argument. By letter dated August 6, 1999, and order entered on October 26, 1999, the panel dismissed with prejudice Claimant's claims of tortious interference with economic advantage, intentional infliction of emotional distress, retaliatory discharge and the

ERISA claims. However, the panel denied the Motion to Dismiss the Claimant's defamation claim and unjust termination claim. The case proceeded with further hearing on these two remaining claims.

Arbitrator Richard Moenning withdrew from the arbitration panel on June 23, 1998 and was not replaced. Parties did not object to the case continuing with only two (2) arbitrators within five (5) days of notification of the vacancy pursuant to section 10313 of the Code of Arbitration Procedure.

AWARD

After considering the pleadings, the testimony, and documentary evidence presented at the hearing, and the post-hearing written and oral submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. In regard to the claim for wrongful termination, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to the Claimant, Paul D. Svigos, the sum of \$515,000.00 in compensatory damages;
2. In regard to the claim for defamation, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to the Claimant, Paul D. Svigos, the sum of \$1,025,000.00 in compensatory damages;
3. Additionally, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to the Claimant, Paul D. Svigos, the sum of \$250,000.00 in punitive damages. In deciding to award punitive damages, the panel considered the arguments of the parties, as well as the case authority cited by the parties, and determined that authority existed for an award of punitive damages to the Claimant;
4. Additionally, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to the Claimant, Paul D. Svigos, the sum of \$250,000.00 in attorney's fees. In deciding to award attorney's fees, the panel considered the arguments of the parties, as well as the case authority cited by the parties, and determined that authority existed for an award of attorney's fees to the Claimant;
5. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is also liable for and shall pay to the Claimant, Paul D. Svigos, the sum of \$107,679.81 in costs;
6. The panel hereby orders Merrill Lynch, Pierce, Fenner & Smith to file a further amended Form U-5 for Claimant Paul D. Svigos. Item number 12, "Reason For Termination," shall read in explanation as follows: "a misunderstanding with superiors;"

7. The panel hereby orders Merrill Lynch, Pierce, Fenner & Smith to file a further amended Form U-5 for Claimant Paul D. Svigos. Item number 15 shall reflect a "no" answer;
8. Any and all other relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
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Adjournment Fees

Adjournments requested during these proceedings:

February 27, 1995 adjournment by Claimant	= \$ fee waived
February 01-February 05, 1999 adjournment by Respondent	= \$ 1,000.00
August 30- September 02, 1999 adjournment by Claimant	= \$ 1,000.00
October 25-October 28, 1999 adjournment by Claimant, denied	= \$ 0.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$ 300.00	= \$ 300.00
Pre-hearing conference: February 27, 1995 1 session	

Two (2) Pre-hearing sessions with Panel x \$ 1,500.00	= \$ 3,000.00
Pre-hearing conferences: January 29, 1999 1 session	
April 16, 1999 1 session	

Seventy Five (75) Hearing sessions x \$ 1,500.00	= \$ 112,500.00
Hearing Dates: October 25, 1995 2 sessions	
October 26, 1995 2 sessions	
October 27, 1995 2 sessions	
January 3, 1996 2 sessions	
January 4, 1996 2 sessions	
January 5, 1996 2 sessions	
May 2, 1996 2 sessions	
May 3, 1996 2 sessions	
May 29, 1996 2 sessions	

May 30, 1996	2 sessions
May 31, 1996	2 sessions
June 20, 1996	3 sessions
June 21, 1996	2 sessions
November 22, 1996	2 sessions
November 25, 1996	2 sessions
November 26, 1996	2 sessions
January 23, 1997	2 sessions
January 24, 1997	2 sessions
May 6, 1997	2 sessions
May 7, 1997	2 sessions
January 5, 1998	2 sessions
January 6, 1998	2 sessions
January 7, 1998	2 sessions
January 8, 1998	2 sessions
January 9, 1998	2 sessions
April 20, 1998	2 sessions
April 21, 1998	2 sessions
July 19, 1999	2 sessions
July 20, 1999	2 sessions
July 21, 1999	2 sessions
October 26, 1999	2 sessions
October 27, 1999	2 sessions
March 1, 2000	2 sessions
March 2, 2000	2 sessions
June 13, 2000	2 sessions
June 14, 2000	2 sessions
June 15, 2000	2 sessions

Total Forum Fees = \$ 115,800.00

The Panel has assessed \$ 115,800.00 of the forum fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Fee Summary

Claimant, Paul D. Svigos, be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Adjournment Fee</u>	= \$ 1,000.00
Total Fees	= \$ 1,500.00
<u>Less payments</u>	= \$ 23,150.00
Balance to be refunded to Claimant	= \$ (21,650.00)

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., be and hereby is solely liable for:

Adjournment Fee	= \$ 1,000.00
<u>Forum Fees</u>	= \$115,800.00

Total Fees	= \$116,800.00
Less payments	= \$ 23,650.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 93,150.00

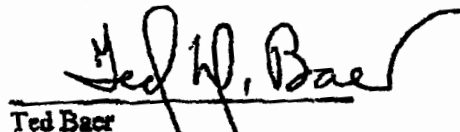
All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

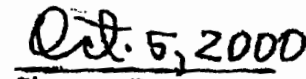


Robert S. Sugarman, Esq.
Public Arbitrator, Presiding Chair


Signature Date



Ted Baer
Industry Arbitrator


Signature Date

10/06/00
Date of Service (For NASD-DR office use only)