

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Paul Schneider

94-00015

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

REPRESENTATION

For Claimant Paul Schneider ("Claimant") appeared Jerome M. Selvers, Esq. of the law firm of Sonnenblick, Parker & Selvers, P.C. located in Freehold, New Jersey.

For Respondent Merrill Lynch Pierce Fenner & Smith, Inc. ("Respondent") appeared Stuart H. Bompey, Esq. of the law firm of Orrick, Herrington & Sutcliffe located in New York, New York.

CASE INFORMATION

Statement of Claim filed: December 30, 1993.

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

Statement of Answer filed: April 15, 1994.

Respondent's Submission Agreement signed on: April 18, 1994.

Claimant's letter brief in opposition to Respondent's Motion to Dismiss filed: June 21, 1994.

HEARING INFORMATION

Hearing Dates/Sessions:	March 1, 1995	-	Two Sessions
	March 2, 1995	-	One Session

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

CASE SUMMARY

Claimant alleged that he had a longstanding relationship with Salvatore M. Salibello ("Salibello"), an accountant with the firm which represented Nine West. Claimant further alleged that it was as a result of his efforts with Salibello that Nine West was introduced to Respondent for purposes of obtaining corporate financing. Claimant also alleged that Respondent recognized Salibello as a finder with respect to Nine West and that Salibello was compensated by Respondent. Claimant alleged that he is also entitled to receive compensation from Respondent for his services as a finder.

Respondent denied that Claimant was entitled to any compensation for his purported services as a finder with respect to the initial and subsequent public offerings of Nine West securities. Respondent maintained that Claimant was contacted by Salibello, who requested the name of an investment banker within Respondent's firm to work with Nine West. Respondent also maintained that Claimant introduced Salibello and Nine West to Respondent's investment bankers and that Claimant had no further involvement with the negotiations.

Respondent maintained that steps were taken toward an initial public offering, but that the dealings with Nine West were discontinued after an initial public offering and other financing options did not materialize. Respondent also maintained that Claimant's employment with Respondent had terminated in 1988. Respondent further maintained that, in 1991, Respondent's investment bankers re-established a dialogue with Nine West and persuaded them to award Respondent the lead in underwriting a public offering.

Respondent maintained that Claimant's contact with the initial dealings were inconsequential and did not establish Claimant as a finder with respect to the contemplated 1987 deal nor with respect to the ultimate 1993 deal. Respondent further maintained that Salibello was the only possible finder with respect to the anticipated 1987 deal and that it was Respondent who independently established the relationship with Nine West which led to the initial public offering.

Respondent maintained that, even if Claimant was entitled to compensation, he forfeited any claim he had by sitting on his rights for over six years. Respondent further maintained that, even if Claimant was a finder, he would not be entitled to compensation because the appropriate finder's fee would have to be reduced by the amount Respondent paid to Salibello.

As affirmative defenses Respondent maintained that the claims are barred by the doctrines of laches and waiver, by Section 15 of the Code of Arbitration Procedure and by the statute of limitations.

RELIEF REQUESTED

Claimant requested compensatory damages of \$250,000.00.

Respondent requested that the Statement of Claim be dismissed in its entirety. In addition, Respondent requested reasonable attorney's fees, costs and disbursements.

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

1. Respondent be and hereby is liable and shall pay to the Claimant the sum of \$15,000.00.
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(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 filing fee previously deposited by Claimant and have assessed the following forum fees:

$$3 \text{ sessions} \times \$750.00 = \$2,250.00$$

Forum fees are assessed against:

1. Claimant be and hereby is liable for the sum of \$1,125.00, representing one-half of the forum fees assessed. Claimant previously deposited \$750.00 with the NASD and, therefore, Claimant shall pay the sum of \$375.00 to the NASD.
2. Respondent be and hereby is liable and shall pay to the NASD the sum of \$1,125.00, representing one-half of the forum fees assessed.

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

ARBITRATORS' SIGNATURES

A handwritten signature in dark ink, appearing to read "Paul A. Merolla", is written over a horizontal line.

Paul A. Merolla, Esq.
Industry Chairperson

Theodor Brown
Industry Arbitrator

Barnard J. Daniels
Industry Arbitrator

Date of Decision: May 1, 1995

STATE OF: *New York*

COUNTY OF: *Richmond* ss:

DEBRA A. VIGNONE
Notary Public, State of New York
No. 43-4918903
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires February 8, 1996

On this *14* day *of July*, 1995, before me personally appeared **Paul A. Merolla, 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.

Debra A. Vignone

STATE OF:

COUNTY OF: ss:

On this day , 1995, before me personally appeared **Theodor Brown** 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:

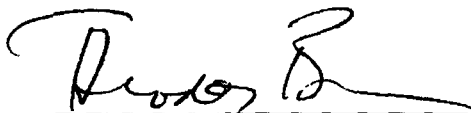
COUNTY OF: ss:

On this day , 1995, before me personally appeared **Barnard J. Daniels** 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.

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

ARBITRATORS' SIGNATURES

Paul A. Merolla, Esq.
Industry Chairperson

A handwritten signature in dark ink, appearing to read 'Theodor Brown', written over a horizontal line.

Theodor Brown
Industry Arbitrator

Barnard J. Daniels
Industry Arbitrator

Date of Decision: May 1, 1995

STATE OF:

COUNTY OF: ss:


On this day , 1995, before me personally appeared Paul A. Merolla, 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: *N.Y.*

COUNTY OF: *Queens* ss:

On this *26* day *June* , 1995, before me personally appeared Theodor Brown 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.

ROBERT MELI
Notary Public, State of New York
No. 45-2654360
Qualified in Queens County
Commission Expires Oct. 31, 1995



STATE OF:

COUNTY OF: ss:

On this day , 1995, before me personally appeared Barnard J. Daniels 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.

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

ARBITRATORS' SIGNATURES

Paul A. Merolla, Esq.
Industry Chairperson

Theodor Brown
Industry Arbitrator

As noted E. Daniels

Barnard J. Daniels
Industry Arbitrator

Date of Decision: May 1, 1995

STATE OF:

COUNTY OF:

ss:

On this day , 1995, before me personally appeared **Paul A. Merolla, 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 , 1995, before me personally appeared **Theodor Brown** 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 21 day April , 1995, before me personally appeared **Barnard J. Daniels** 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.

Raymond C. Daniels

RAYMOND C. DANIELS
Notary Public, State of New York
No. 314661146
Qualified in New York County
Commission Expires Oct. 31, 1996