

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Anthony H. Hoskins,
Claimant,

v.

No. 94-00202

Merrill Lynch, Pierce, Fenner,
& Smith, Inc.
Respondent.

REPRESENTATION OF PARTIES

Claimant Anthony H. Hoskins ("Claimant") was represented by Thomas M. Rainey, Esq., Lawrence, Kansas.

Respondents Merrill Lynch, Pierce, Fenner, & Smith, Inc. and James G. Perilstein were represented by Gordon D. Gee, Esq., of Siegfried, Bingham, Selzer & Gee, Kansas City, Missouri.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about January 18, 1994. Claimant's Submission Agreement was signed on January 18, 1994. Claimant's Amended Statement of Claim was filed on or about March 4, 1994.

Respondents' Answer was filed on or about April 14, 1994. Respondents' Submission Agreements were signed on May 25, 1994.

HEARING INFORMATION

Pre-Hearing conference

date(s): September 30, 1994. One (1) session.
November 4, 1994. One (1) session.
November 9, 1994. One (1) session.

Hearing dates: November 14, 1994. Two (2) sessions.
November 15, 1994. Two (2) sessions.
November 16, 1994. Two (2) sessions.

Hearing Location: Kansas City, Missouri.

CASE SUMMARY

Claimant stated that on January 13, 1994, Respondents terminated his employment at the Kansas City branch. Claimant further stated he is black. Claimant alleged that his termination was wrongful, without any legitimate cause, and discriminatory in nature, in violation of 42 U.S.C. Section 1981 and 42 U.S.C. Sections 2000 et seq. Claimant further alleged that he was treated like a criminal in front of his colleagues. Claimant also alleged that Mr. Perilstein's comments that he did not "fit the typical Merrill Lynch broker profile," and that he "wasn't what Merrill Lynch was looking for" are indicia of discriminatory motivation in light of the fact that Claimant had been honored nationally and locally by Merrill Lynch for his success at generating new business, and being one of the top performers in his class. Moreover, Claimant alleged that Respondents attempted to interfere with his relationship with the customers he served at Merrill Lynch by calling on his clients and by sending letters to PaineWebber's branch manager threatening litigation should they employ Claimant.

In their Answer, Respondents denied all of the material allegations contained in the Statement of Claim which were not specifically admitted in the Answer. Respondents also denied that Claimant is entitled to exemplary or punitive damages, and further denied any liability whatsoever with regard to Claimant's claim of racial discrimination. Respondents asserted that they went out of their way to deal with Claimant's departure and termination in a way that would not reflect badly on the Claimant or would damage his reputation. Respondents further asserted that their actions with respect to the contact with PaineWebber's branch manager as well as any communication or memorandum circulated in Claimant's former branch did not indicate any adverse racial motives towards the Claimant. Respondents also asserted that race had no role in their decision to terminate Claimant's employment. Lastly, Respondents asserted that the reasons for termination arose out of Claimant's lack of commitment to Merrill Lynch, the excessive transactional nature of Claimant's business, Claimant's inability to manage his business, and his dissatisfaction with Respondents based upon the multiple meetings with PaineWebber.

RELIEF REQUESTED

Claimant requested a declaration by the panel that the Respondents' actions were discriminatory in nature and give rise to compensatory, exemplary, and punitive damages pursuant to 42 U.S.C. Section 1981, Title VII, and Missouri Civil Rights Statutes. Claimant also requested a declaration that Respondents wrongfully terminated him. Claimant requested compensatory, exemplary, and punitive damages of \$4,000,000.00.

Respondents requested that the panel dismiss all of Claimant's claims, that the panel award the Respondents their costs and attorneys' fees, and that the panel grant the Respondents such other and further relief as justice requires.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed by 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 original(s) remain on file with the NASD.

The arbitration was closed on December 29, 1994.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Claimant Anthony H. Hoskins' claims are, and each of them, denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

Pursuant to Section 44(c) of the Code, the following forum fees are assessed:

3 pre-hearing conference sessions x \$300.00 = \$900.00

6 hearing sessions x \$1,000.00 = \$6,000.00

Pursuant to Section 44(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$500.00, and shall RETAIN the hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$2,450.00 are assessed against the Claimant.

NASD ARBITRATION NO. 94-00202

AWARD PAGE 4 OF 4

Additional forum fees in the amount of \$3,450.00 are assessed against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc..

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

CONCURRING ARBITRATORS

Dated:

January 10, 1995

January 10, 1995

January 11, 1995

Date of Service by the NASD: 1.12.95