

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Earl Leroy Schriver, Jr.

NASD Arbitration
No.94-01221

Name of Respondents

Merrill Lynch & Co., Inc.

Merrill Lynch Life Agency, Inc.

Merrill Lynch, Pierce, Fenner & Smith, Inc.

REPRESENTATION

For Claimant: James A. Cathcart, Esq., Bonneville, Viert, Morton & McGoldrick,
Tacoma, Washington

For Respondents: Eric D. Lansverk, Esq., and Michael Scott, Esq., Hillis Clark Martin &
Peterson, Seattle, Washington

CASE INFORMATION

Statement of Claim filed: March 30, 1994

Claimant's Submission Agreement signed: March 25, 1994

Joint Statement of Answer filed: August 16, 1994

Respondents' Submission Agreements signed as follows:

Merrill Lynch & Co.: August 11, 1994

Merrill Lynch Life Agency: August 12, 1994

Merrill Lynch, Pierce, Fenner & Smith: August 11, 1994

HEARING INFORMATION

A pre-hearing telephone conference lasting one session was held on March 28, 1995.

The evidentiary hearing was held in Seattle, Washington, as follows:

April 24, 1995	-	2 sessions
April 25, 1995	-	2 sessions
April 26, 1995	-	2 sessions

CASE SUMMARY

Claimant alleged wrongful termination, breach of employment contract, violation of the public policy of the State of Washington, and slander arising from Respondents' termination of his employment on the grounds of "lack of performance" and for stating on Claimant's U-5 that the termination was for "inability to perform to standards." Claimant alleged he has been unable to find suitable employment because of the statements on the U-5 and because of this dispute with Respondents. Claimant also alleged he was terminated for reporting the misconduct of another employee.

Respondents denied all allegations of wrongdoing, and asserted that Claimant was hired pursuant to an employment contract in which he expressly acknowledged that his employment could be terminated with or without cause at any time. Respondents further asserted that the termination of Claimant was a business decision based on Claimant's declining production. Respondents claimed that statements on the form U-5 did not provide a basis for a slander claim since the statements were both privileged and true. Respondents also argued that Claimant was not terminated for reporting the misconduct of another employee, and stated that Claimant's termination came three years after that employee's misconduct was discovered and after that employee was convicted of criminal fraud for acts committed elsewhere.

RELIEF REQUESTED

Claimant requested damages of \$4.5 million, plus attorney's fees and costs of arbitration.

Respondents requested dismissal of all claims.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 remains 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. All claims asserted by Claimant are dismissed in their entirety.
2. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the NASD shall retain the \$500 non-refundable filing fee paid by Claimant.

Forum fees are assessed as follows:

Total fees:

1 pre-hearing telephone conference @ \$300 / session	=	\$300.00
<u>6 hearing sessions @ \$1,000 / session</u>	=	<u>\$6,000.00</u>
		\$6,300.00

Claimant's one-half share	=	\$3,150.00
<u>Credit for deposit</u>	=	<u>\$1,000.00</u>
Balance due	=	<u>\$2,150.00</u>


Respondents' one-half share	=	<u>\$3,150.00</u>
-----------------------------	---	-------------------

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Frederic E. Dorkin	Industry Chairperson
John F. Cockburn	Industry Panelist
Monte W. Anthony	Industry Panelist

Concurring Arbitrators' Signatures



Served 5/16/95