

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

David V. Cohen

Award No.

vs.

94-02355

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc

REPRESENTATION

For Claimant, David V. Cohen ("Claimant") David J. Kneeland, Esq. from the law firm of Glickman, Sugarman & Kneeland located in Worcester, Massachusetts.

For Respondent, Merrill Lynch, Pierce, Fenner and Smith, Inc. ("Respondent") Brian G. Killian, Esq., from the law firm of Sherin and Lodgen, located in Boston, Massachusetts.

CASE INFORMATION

Statement of Claim was filed on June 20, 1994.

Claimant's Submission Agreement signed on March 30, 1994.

Statement of Answer was filed by Respondent, Merrill Lynch on October 28, 1994.

Respondent did not execute a Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions: August 9, 1995 - 2 sessions

Hearing Location: American Arbitration Association, 133 Federal Street. 11th Floor, Boston, Massachusetts

CASE SUMMARY

Claimant has brought a claim against Merrill Lynch alleging that Respondent wrongfully withheld compensation earned by him and broke numerous agreements which forced him to seek employment elsewhere. Claimant also alleges that he was employed by Respondent in December of 1990 with the understanding that he could earn bonuses for assets brought to the firm. Claimant further alleges that the Respondent changed its compensation program which included a new schedule of bonus incentives. Claimant states that he attained the incentive level for "Level I" but was later told that there was a misunderstanding concerning the operation of the bonus incentive program operated and that he actually did not reach any of the goals set in the compensation program that would enable him to receive a bonus. Claimant also states that on February 23, 1993, Respondent's regional director, Paul Fehrenbach, offered him a \$15,000.00 loan forgivable over three years if the Claimant met a new set of goals. Claimant alleges that on March 16, 1993 he was told that instead of the loan, he would receive \$10,000.00 salary for April and a \$10,000.00 forgivable draw for the month of May. Claimant further states that he did not received the salary or the draw.

Respondent, denies any allegation of wrongdoing asserts two affirmative defenses and states that Claimant was treated fairly in all respects. Respondent contends that when the new incentive plan was first explained to the financial consultants there was some confusion. Respondent maintains that Claimant failed to meet any of the production levels required to receive a bonus. Respondent further contends that Claimant was under some financial pressure and discussed the possibility of a loan with management. Respondent maintains that such a loan would only be in consideration of future performance. Respondent states that before the loan arrangement was worked out, Claimant resigned.

RELIEF REQUESTED

Claimant requests an award of \$79,747.41 plus costs and attorney's fees.

Respondent requests that the claim be dismissed in its entirety.

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 remains 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 claims are denied.
2. Each party shall bear its perspective costs and attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed and shall be borne equally by the parties.

Non-refundable filing fee: \$500.00

Hearing Session Fee: \$1,200.00 (2 hearing sessions @ \$600.00 per session).

Total Fees = \$1,700.00

1. Claimant is assessed a \$850.00. Claimant previously paid \$1,100.00 and is entitled to a refund in the amount of \$250.00.
2. Respondent is assessed \$850.00 and shall satisfy this assessment by reimbursing Claimant \$250.00 and by remitting the balance \$600.00 to the NASD.

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

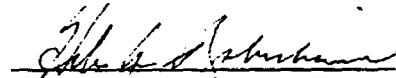
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ARBITRATION PANEL

Richard A. Baum	-	Industry Panelist
Helen Ann Robichaud, Esq.	-	Industry Chairperson
Michael B. O'Toole	-	Industry Panelist

Concurring Arbitrator's Signature


Helen Ann Robichaud, Esq.

Executed on:

~~NASD Date of Decision:~~

Date of Decision: September 15, 1995
September 6, 1995

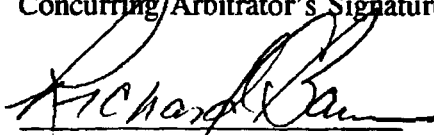
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Richard A. Baum	-	Industry Panelist
Helen Ann Robichaud, Esq.	-	Industry Chairperson
Michael B. O'Toole	-	Industry Panelist

Concurring Arbitrator's Signature


Richard A. Baum

NASD Date of Decision: September 6, 1995

Award No. 94-02355

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ARBITRATION PANEL

Richard A. Baum	-	Industry Panelist
Helen Ann Robichaud, Esq.	-	Industry Chairperson
Michael B. O'Toole	-	Industry Panelist

Concurring Arbitrator's Signature

A handwritten signature in cursive script, appearing to read "Michael B. O'Toole", written over a horizontal line.

Michael B. O'Toole

NASD Date of Decision: September 6, 1995