

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant

Marshall R. Cassedy, Jr.

95-00408

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

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**REPRESENTATION**

For Claimant: Thomas D. Birge, Esq. and Cathryn B. Mayers, Esq. of Birge & Mayers, P.C., Denver, CO.

For Respondent: Nicholas V. Pulignano, Jr., Esq. of Marks, Gray, Conroy & Gibbs, P.A., Jacksonville, FL.

**CASE INFORMATION**

Statement of Claim filed: January 26, 1995.

Claimant's Submission Agreement signed on: January 13, 1995.

Statement of Answer filed by Respondent on: March 22, 1995.

Amended Statement of Answer filed by Respondent on: October 11, 1996.

On behalf of Respondent Merrill Lynch Pierce Fenner & Smith Inc., Thomas W. Smith signed the Submission Agreement on: March 22, 1995.

**HEARING INFORMATION**

On February 27, 1996 a telephonic pre-hearing conference lasting one session was conducted with the Chairperson.

On June 18, 19, 20, 21, 1996; September 18, 19, 1996; and January 27, 28, 29, 30, 1997, hearings lasting twenty (20) sessions were conducted in Tampa, Florida.

## **CASE SUMMARY**

Claimant alleged that he was a valuable contributor to Respondent's business during his 14-year tenure as a registered securities representative with Respondent. The Claimant further alleged that in October 1992, he had a conversation with the Respondent's division director in which he expressed criticism of Respondent's regional manager. Claimant alleged that his conversation with the division director was repeated to the regional manager and that several months later he was terminated. Respondent indicated that the basis of the termination was that the Claimant received a customer complaint and responded to the complaint without prior approval or knowledge of the branch manager while the Claimant alleged that the customer was requesting a trade correction rather than filing a complaint. Further, the Claimant alleged that the Respondent negligently, maliciously and recklessly reported false information on the CRD system for the purpose of damaging Claimant's relationship with his customers, impeding his ability to obtain his license, and damaging his ability to obtain future employment.

Respondent alleged that Claimant committed a long list of policy violations during his 14 years of employment and was terminated after attempting to respond in writing to a customer complaint without prior knowledge or approval of branch management. The Respondent alleged that the Claimant was an "at will" employee and could be terminated by the Respondent at any time, for any cause or for no cause at all, without incurring liability.

## **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$3,284,094.00 plus interest, consequential damages, attorneys' fees in the amount of \$161,972.00, costs in the amount of \$17,741.11, punitive damages three times the amount of compensatory damages, and an order requiring the Respondent to correct the false statements Respondent filed with CRD.

Respondent requested a dismissal of the claims and an award of attorneys' fees, costs and arbitration fees.

## **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 Motions in which a ruling was previously reserved are denied.
- 2) Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is found liable and shall pay to the Claimant compensatory damages in the amount of \$300,171.00 which includes pre-judgment interest at the rate of 10% per annum.
- 3) Respondent Merrill Lynch Pierce Fenner & Smith, Inc. shall pay to the Claimant \$161,972.00 in attorneys' fees pursuant to Florida Statute 448.08.

- 4) Respondent Merrill Lynch Pierce Fenner & Smith, Inc. shall pay to the Claimant the sum of \$17,741.00 representing his costs including the filing fee, service of process, research, copies, postage and long distance telephone calls.
- 5) The Claimant's requests for punitive damages and consequential damages are denied.
- 6) The Claimant's request for an Order requiring the Respondent to correct the statements Respondent filed with CRD is granted as follows: The statement in paragraph 9 of the U-5 Disclosure Reporting Page (DRP-5) of March 22, 1993 which reads "Mr. Cassidy was terminated when it came to management's attention that he had attempted to respond in writing to a customer complaint without the prior knowledge or approval of branch management" shall be deleted.
- 7) Respondent's requests for attorneys' fees, costs and arbitration fees are denied.

#### **FORUM FEES**

Pursuant to Rule 10205 of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$30,300.00 (one pre-hearing conference with the Chairperson X \$300.00 plus twenty hearing sessions X \$1,500.00).

- 1) Respondent is hereby assessed \$30,300.00 for which National Association of Securities Dealers Regulation, Inc. shall retain the \$1,500.00 previously deposited by the Claimant in partial satisfaction thereof, leaving a balance due in the sum of \$28,800.00.
- 2) The National Association of Securities Dealers Regulation, Inc., shall retain the \$350.00 member surcharge previously paid by the Respondent.
- 3) The Claimant shall pay to National Association of Securities Dealers Regulation, Inc., the sum of \$500.00 representing the claim filing fee.
- 4) Due to an adjournment of the hearing scheduled on March 13, 1996, the Claimant shall pay a postponement fee in the sum of \$600.00.

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

Concurring Arbitrators' Signatures

Public/Industry

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Herbert L. Blume  
Chairperson

Public

/S/

\_\_\_\_\_  
Daniel Calabria

Industry

/S/

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David M. Snyder, Esq.

Public

Date of Decision: 7/7/97