

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Michael Kukanza and Carmine Ricciardi (Claimants) vs. Merrill Lynch Pierce Fenner & Smith Inc., Joseph D. Argilagos, Paul Mulvaney, T.J. Lim and Rosanna Fazio (Respondents)

Case Number: 95-01175
Consolidated with 95-01054

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Michael Kukanza ("Kukanza"), and Carmine Ricciardi, ("Ricciardi"), hereinafter referred to as "Claimants": Jeffrey L. Liddle, Esq., Liddle & Robinson, L.L.P, New York, New York.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., ("MLPF&S"), and Joseph Argilagos, ("Argilagos"), T.J. Lim ("Lim"), Paul Mulvaney ("Mulvaney"), and Rosanna Fazio, ("Fazio"), hereinafter collectively referred to as "Respondents" Ira Rothstein, Esq., Orrick, Herrington & Sutcliffe, New York, New York.

CASE INFORMATION

Statement of Claim filed by Claimant, Kukanza, on or about: February 28, 1995.
Statement of Claim filed by Claimant, Ricciardi, on or about: February 28, 1995.
Claimant, Kukanza, signed the Uniform Submission Agreement: March 1, 1995.
Claimant, Ricciardi, signed the Uniform Submission Agreement: February 23, 1995.
Statements of Answer filed by Respondents, MLPF&S, Argilagos, Lim, Mulvaney and Fazio, on or about: May 19 and June 6, 1995.
Respondent, MLPF&S, signed the Uniform Submission Agreement: May 19 and June 1, 1995.
Respondent, Argilagos, signed the Uniform Submission Agreement: June 1, 1995.
Respondent, Lim, signed the Uniform Submission Agreement: June 27, 1995.

CASE SUMMARY

Claimants, Kukanza and Ricciardi, asserted the following causes of action: failure to pay compensation earned in 1994; failure to pay severance and compensation; and, defamation and disparagement. Claimant, Kukanza, also asserted that Respondents failed to pay restricted share award benefits.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants have no basis for bonus compensation or damages under the New York Labor Law; and truth is an absolute defense to a defamation claim.

RELIEF REQUESTED

Claimant, Kukanza, requested:

Compensatory Damages	\$1,607,000.00
Liquidated Damages	\$121,875.000 (25% of \$487,000.00)
Punitive Damages	\$10,000,000.00
Interest	\$
Attorneys' Fees	\$
Other Costs	\$
Other Monetary/Non-Monetary Relief if any:	

Claimant, Ricciardi, requested:

Compensatory Damages	\$1,282,333.00
Liquidated Damages	\$70,583.00 (25% of \$282,333.00)
Punitive Damages	\$10,000,000.00
Interest	\$
Attorneys' Fees	\$
Other Costs	\$
Other Monetary/Non-Monetary Relief if any:	

Respondents requested dismissal of the claim and

Attorney's Fees	\$
Other Costs and Disbursements	\$

OTHER ISSUES CONSIDERED AND DECIDED

Claimants and Respondents have agreed to consolidate their claims.

Respondent, Mulvaney, did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration, but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure("Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator Panel on all issues submitted.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and Respondents' post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, MLPF&S, is hereby liable and shall pay Claimants as follows.
 - a. Claimant, Kukanza - \$190,000.00
 - b. Claimant, Ricciardi - \$225,000.00
2. All Claims against Respondents, Argilagos, Lim, Mulvaney and Fazio are denied.
3. Any and all other relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee (Case Number 95-01175)	= \$500.00
Initial filing fee (Case Number 95-01054)	= \$500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge (Case Number 95-01175)	= \$500.00
Member surcharge (Case Number 95-01054)	= \$500.00

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Dates:

May 5-9, 1997 adjournment by Claimants, \$1,000.00
December 2, 1997 adjournment by Respondents, \$1,000.00
January 22-23 and 26 - 27, 1998 adjournment by Claimants, Fee Waived
December 3, 1999 adjournment by Respondents, Fee Waived
June 12, 2000 adjournment by Respondents, \$1,000.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Thirty-six (36) Hearing sessions x \$1,500.00	= \$54,000.00
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Hearing Dates:	May 14, 1996	1 session
	May 15, 1996	2 sessions
	October 20, 1997	2 sessions
	October 24, 1997	2 sessions
	November 5, 1998	2 sessions
	November 6, 1998	2 sessions
	February 18, 1998	2 sessions
	February 26, 1999	2 sessions
	March 1, 1999	2 sessions
	April 8, 1999	1 session
	April 9, 1999	2 sessions
	April 27, 1999	2 sessions
	May 27, 1999	2 sessions
	July 28, 1999	2 sessions
	October 8, 1999	2 sessions
	December 17, 1999	2 sessions
	February 10, 2000	1 session
	February 11, 2000	2 sessions
	June 6, 2000	1 session
	August 10, 2000	2 sessions

Total Forum Fees \$54,000.00

The Panel has assessed \$54,000.00 of the forum fees to Respondents, Merrill Lynch

Fee Summary

Claimant, Kukanza, be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$500.00
Total Fees	= \$500.00
<u>Less payments</u>	= \$2,000.00
Refund Due Claimant, Kukanza	= \$1,500.00

Claimant, Ricciardi, be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$500.00
Total Fees	= \$500.00
<u>Less payments</u>	= \$2,000.00
Refund Due Claimant, Ricciardi	= \$1,500.00

Claimants, Kukanza & Ricciardi, be and hereby are jointly and severally liable for:

<u>Adjournment Fee</u>	= \$1,000.00
Total Fees	= \$1,000.00
<u>Less payments</u>	= \$2,000.00
Refund Due Claimants, Kukanza & Ricciardi	= \$1,000.00

Respondent, MLPF&S, be and hereby is solely liable for:

Member Fees	= \$ 1,000.00
Forum Fees	= \$54,000.00
Total Fees	= \$55,000.00
Less payments	= \$ 1,000.00
Balance Due NASD Dispute Resolution, Inc.	= \$54,000.00

Respondents, MLPF&S, Argilagos, Lim, Mulvaney and Fazio, be and hereby are jointly and severally liable for:

Adjournment Fee	= \$2,000.00
Total Fees	= \$2,000.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,000.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures



Lawrence A. Pittore, Esq.
Presiding Chair, Public Arbitrator

Signature Date

I, Lawrence A. Pittore, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Lawrence A. Pittore, Esq.

Fred Pieroni

Fred Pieroni
Public Arbitrator

9/26/00
Signature Date

I, Fred Pieroni, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Fred Pieroni

Fred Pieroni

Robina Fedora Asti
Industry Arbitrator

I, Robina Fedora Asti, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rule, that I am the individual described herein and who executed this instrument which is my award.

Robina Fedora Asti

October 4, 2000
Date of Service (For NASD-DR office use only)

Fred Pieroni
Public Arbitrator

Signature Date

I, Fred Pieroni, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Fred Pieroni

Robina Fedora Asti
Industry Arbitrator

I, Robina Fedora Asti, do hereby affirm, pursuant to Article 7505 of the Civil Practice Law and Rule, that I am the individual described herein and who executed this instrument which is my award.


Robina Fedora Asti

October 4, 2000
Date of Service (For NASD-DR office use only)