

NASD REGULATION, INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant(s)

Marc A. Helie

95-01297

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith Inc
Manuel Mejiaaoun

REPRESENTATION

For Claimant Marc A. Helie ("Helie") appeared Jeffrey L. Liddle, Esq., Laurence S. Moy, Esq. and Carl G. Guida, Esq. of the law office Liddle & Robinson located in New York, New York.

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Manuel Mejia-Aoun ("Mejia")(collectively "Respondents") appeared Frederick Brown, Esq. and Ruth D. Raisfeld, Esq., of the law office Orrick, Herrington & Sutcliffe located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on March 27, 1995.

Claimant's Submission Agreement was signed on March 06, 1995.

A Joint Statement of Answer was filed by Respondents on May 16, 1995.

Respondent Merrill Lynch's Submission Agreement was signed on January 24, 1996.

Respondent Mejia's Submission Agreement was signed on April 25, 1996.

HEARING INFORMATION

Pre-Hearing Conference:	April 04, 1996	One Session
	April 09, 1996	One Session
	April 22, 1996	One Session
	March 27, 1997	One Session
	June 11, 1997	One Session
Post Hearing Conference	June 30, 1997	One S-

Hearing Date(s)/Sessions:	April 25, 1996	Two Sessions
	August 07, 1996	Two Sessions
	September 10, 1996	Two Sessions
	September 11, 1996	Two Sessions
	September 12, 1996	Two Sessions
	January 30, 1997	Two Sessions
	April 01, 1997	Two Sessions
	April 02, 1997	One Session
	May 12, 1997	Two Sessions
	May 16, 1997	Two Sessions
	June 17, 1997	Three Sessions

The pre-hearing and post hearing conferences were conducted telephonically. The hearings were held at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that Respondent Merrill Lynch failed to pay him earned compensation for 1993 and 1994. Claimant alleged that Respondents made material misrepresentations regarding compensation. Claimant alleged that Respondent Merrill Lynch failed to provide to Claimant stock options, restricted share awards, and pension benefits due to him.

Claimant alleged that Respondent Merrill Lynch hired him as a trader in the firm's Emerging Markets Group in 1989, where he worked until his termination on July 31, 1994. Claimant alleged that Respondent Merrill Lynch terminated him without notice, stating on his Form U-5 that his position had been eliminated. Claimant alleged that Respondent Merrill Lynch failed and refused to pay him any bonus for 1994, despite the fact that Respondent Mejia had told Claimant that the firm would pay a bonus of 10% of his production and in less productive years bonuses would be paid within a certain range. Claimant alleged that Respondent Merrill Lynch terminated his employment in order to avoid paying claimant his stock options and pension benefits which would have vested in October 1994. Claimant also alleged that Respondent Merrill Lynch prevented him from selling his shares of Merrill Lynch stock and exercising his stock options.

Respondents maintained that Claimant was employed by them for an indefinite term pursuant to a written offer letter. Respondents maintained that in this letter it stated that a bonus was discretionary and dependent upon performance and not guaranteed in any way. Respondents maintained that Claimant

signed this letter. Respondent Merrill Lynch maintained that Respondent Mejia explained to Claimant that a bonus was dependent on the success of the firm and that 10% could be used as a frame of reference for future annual income. Respondents maintained that bonuses are payable only if the employee is

employed on the date they are paid, which in 1994 Claimant was not. Respondents maintained that Claimant was offered a generous severance package which included salary continuation and pro rata distribution of unvested incentive compensation that he had been awarded in prior years. Respondents maintained that Claimant refused the package.

RELIEF REQUESTED

Claimant requested relief as follows:

- (a) as a result of Merrill Lynch's breach of its agreement to pay Claimant earned compensation for the years 1993 and 1994, compensatory damages in an amount not less than \$2,414,167.00;
- (b) as a result of Merrill Lynch's willful failure to pay Claimant such compensation, compensatory damages in an amount not less than \$2,414,167.00 plus liquidated damages in an amount not less than \$403,541.75 (25% of \$2,414,167.00);
- (c) as a result of Merrill Lynch's and Mr. Mejia-Aoun's fraudulent misrepresentations, damages (including compensatory and punitive damages) in an amount not less than \$2,000,000.00;
- (d) as a result of Merrill Lynch's willful denial of Claimant's rights to stock options and restricted share awards, compensatory damages in an amount not less than \$151,268.00
- (e) as a result of Merrill Lynch's willful interference with the attainment of Claimant's pension benefits, compensatory damages in an amount to be determined;
- (f) upon each of the Claims, attorneys' fees, interest, costs and other such relief as the Arbitrators deem just and proper.

Respondents requested that the Statement of Claim be dismissed and that Claimant be responsible for the reasonable costs and disbursements incurred in defending this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD Regulation, Inc.

The Arbitrators considered and decided on the following:

- (a) Requests for sanctions by Claimant and Respondents denied.
- (b) All claims against Respondent Mejia are dismissed.

- (c) All reference to this arbitration shall be expunged from Respondent Mejia's Form U-4.
- (d) Claimant's claim for attorney's fees is denied.

AWARD

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

1. Respondent Merrill Lynch be and hereby is liable and shall pay to Claimant the sum of \$600,000.00 inclusive of interest in compensatory damages.
2. Respondent Merrill Lynch be and hereby is liable and shall give to Claimant 7,056 shares of Merrill Lynch common stock together with all dividends declared since July 31, 1994.
3. Forum Fees shall be assessed equally between Claimant and Respondent Merrill Lynch.

FORUM FEES

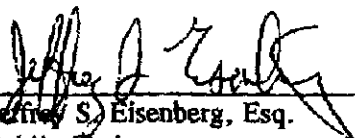
Pursuant to Rule 10332 of the NASD Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$500.00 non-refundable filing fee previously deposited by the Claimant and have assessed the following Forum Fees:

5 Pre-hearing sessions x \$300.00 (with Chair only)	=	\$ 1,500.00
1 Post hearing session x \$1,000.00 (with the full panel)	=	\$1000.00
22 Hearing sessions x \$1,000.00	=	\$22,000.00
Total Forum Fees	=	\$24,500.00

- 1) Claimant is hereby liable and shall pay to NASD Regulation, Inc. the sum of \$12,250.00, representing one half of the forum fees assessed. Claimant previously deposited \$1,000.00 with NASD Regulation, Inc.; therefore, Claimant owes the sum of \$11,250.00.
- 2) Respondent Merrill Lynch is hereby liable and shall pay to NASD Regulation, Inc. the sum of \$12,250.00 representing one half of the forum fees assessed.
- 3) Respondent Merrill Lynch is hereby liable for the sum of \$500.00 representing the Member Surcharge. Merrill Lynch has previously deposited the sum of \$500.00 with NASD Regulation, Inc. and therefore owes nothing toward the Member Surcharge.

Fees are payable to the NASD Regulation, Inc.

ARBITRATORS' SIGNATURES



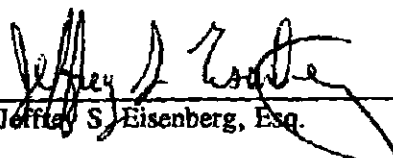
Jeffrey S. Eisenberg, Esq.
Public Chairperson

George M. Bulow
Public Panelist

Fred Shinagel
Industry Panelist

Date of Decision: September 4, 1997

I, Jeffrey S. Eisenberg, 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.



Jeffrey S. Eisenberg, Esq.

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ARBITRATORS' SIGNATURES

Jeffrey S. Eisenberg, Esq.
Public Chairperson



George M. Bulow
Public Panelist

Fred Shinagel
Industry Panelist

Date of Decision: September 4, 1997

I, George M. Bulow, 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.



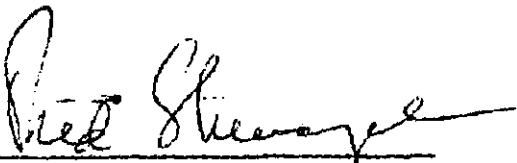
George M. Bulow

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ARBITRATORS' SIGNATURES

Jeffrey S. Eisenberg, Esq.
Public Chairperson


George M. Bulow
Public Panelist



Fred Shinagel
Industry Panelist

Date of Decision: September 4, 1997

I, Fred Shinagel, 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 Shinagel