

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Merrill Lynch Pierce Fenner & Smith Inc

95-01482

Name of Respondent

Nicholas Leone

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**REPRESENTATION**

For Claimant: John R. Cummings, Esq., in-house counsel at Merrill Lynch Pierce Fenner & Smith Inc., New York, NY.

For Respondent: Nicholas Leone appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: March 24, 1995.

Claimant's Submission Agreement signed on: March 22, 1995.

Statement of Answer filed by Respondent Nicholas Leone on: July 14, 1995.

Respondent Nicholas Leone's Submission Agreement signed on: July 12, 1995.

**HEARING INFORMATION**

Hearing Date/Sessions: January 16, 1996 / 2 Sessions.

Hearing Location: City Midday Club, New York, NY.

### CASE SUMMARY

Claimant alleged that on or about December 7, 1992 Respondent became employed as a Financial Consultant Trainee with Claimant and as a condition of his employment with Merrill Lynch Pierce Fenner & Smith Inc. ("Merrill Lynch"), Respondent voluntarily agreed to and executed Claimant's Agreement to Repay Costs of Training. Claimant next alleged Respondent provoked his termination and he was terminated for cause on October 21, 1994 and has commenced employment with a competing securities firm. Claimant next alleged Respondent refused and continues to refuse to repay the agreed upon damages despite requests by Merrill Lynch Pierce Fenner & Smith Inc.

Respondent maintained that pursuant to the terms of the Agreement he participated in the Merrill Lynch Financial Consultant Program and was registered with appropriate securities bodies and excelled in the program above goal expectations of the firm. Respondent next maintained he continuously performed above average and was consistently awarded achievement recognition. Respondent next maintained he met all of his employment requirements financially and otherwise and his termination was unwarranted and he was terminated immediately prior to his completing the training period and Merrill Lynch's termination of Nicholas Leone's employment was hasty and diligent.

### RELIEF REQUESTED

Claimant requested damages in the sum of \$ 19,000.00 and that the arbitrators assess the costs and disbursements of the proceeding against the Respondent.

Respondent requested that the panel dismissed the claim in its entirety and direct Merrill Lynch to correct any and all derogatory statements comments contained on the Respondent's U-4 document.

### AWARD

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

1. All claims by the Claimant be and hereby are dismissed in all respects.
2. The Respondent's request that his U-5 Form be amended is denied.
3. The Respondent is liable and shall pay to the Claimant the sum of \$250.00 representing a portion of the hearing fees.
4. Each party shall bear their respective costs including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Claimant filing fee:	\$500.00
Hearing session deposit:	2 sessions X \$600.00 = \$1,200.00
Total Fees:	\$1,700.00

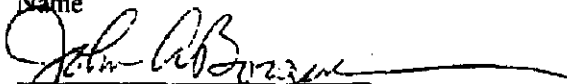
The undersigned arbitrators have determined that the Claimants shall bear one-half the cost of arbitration and the Respondent shall bear one-half the cost of arbitration.

1. The Claimant is assessed the sum of \$850.00. The Claimant previously paid \$1,100.00 and does not owe a balance.
2. The Respondent is liable and shall pay to the NASD the sum of \$600.00 representing the forum fees.

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

Concurring Arbitrators' Signatures

Name



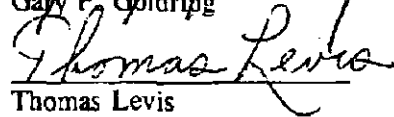
John A. Borgese, Esq.

Industry



Gary F. Goldring

Industry



Thomas Levis

Industry

Date of Decision: February 12, 1996

RECIPIENTS:

John A. Borgese, Esq.