

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Merrill Lynch Pierce Fenner & Smith Inc

95-05104

Name of Respondent

Paul V. Grannan

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**REPRESENTATION**

For Claimant, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"): Andrew Quigley, Esq. of Merrill Lynch, New York, New York.

For Respondent, Paul V. Grannan ("Grannan"): Stanley T. Padgett, Esq. of Smith, Williams & Bowles, Tampa, Florida.

**CASE INFORMATION**

Statement of Claim filed: 10/24/95.

Claimant's Submission Agreement/Corporate Acknowledgement signed on: 10/24/95 (by Thomas W. Smith on behalf of the firm).

Statement of Answer and Counterclaim filed by Respondent, Grannan on: 12/29/95.

Respondent, Grannan, did not file an executed Submission Agreement as required under sections 12 and 25 of the Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Date/Sessions: 6/25/96-two (2) sessions.

Hearing Location: Tampa, Florida.

**CASE SUMMARY**

Claimant alleged that Respondent, Grannan was hired by Merrill on or about August 19, 1994;

that Merrill Lynch loaned Grannan sixty thousand dollars (\$60,000.00) for which Grannan executed a Promissory note on or about August 19, 1994; that under the terms of the Promissory Note, Merrill Lynch is entitled to demand repayment of said loan at any time; that Grannan's employment with Merrill Lynch ended on September 8, 1995 and that Grannan has since joined a competitor firm, Raymond James & Associates; that Forty Thousand Dollars (40,000.00) plus interest remain due and owing on the Promissory Note; that on September 19, 1995, Merrill made written demand for repayment of the \$40,000.00 plus interest due and owing on the Promissory Note; that Grannan failed to repay the amount owed.

Respondent, Grannan stated that Merrill Lynch has been guilty of fraud in connection with its hiring of Respondent, which fraud has resulted in damages to Grannan which substantially exceeds the amount of any sum otherwise due to Merrill Lynch; that the fraud is the basis both for setoff and recoupment. Further, Respondent, Grannan, asserted a Counterclaim against Merrill Lynch stating that in the course of recruiting Grannan and inducing him to leave Raymond James, Merrill Lynch made misrepresentations and omissions of material facts causing him to suffer damages.

#### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$40,000.00 plus interest, the costs of this proceeding and recovery of its attorney's fees incurred in collection of the unpaid sum of the note.

Respondent requested the recovery of the damages he has suffered plus punitive damages in an amount sufficient to deter merrill lynch from such irresponsible conduct in the future.

#### **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.

#### **AWARD**

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

1. Respondent, Grannan, is found liable and shall pay to Claimant, Merrill Lynch, the sum of \$40,000.00 plus interest at the rate of six and one half percent (6 1/2 %) from August 19, 1994 to the date of payment of this Award.
2. Respondent, Grannan's Counterclaim is hereby denied.
3. Claimant's request for attorney's fees is hereby denied.

4. Respondent, Grannan's request for punitive damages is hereby denied.
5. All other claims are denied.

**FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$1200.00 (two (2) hearing sessions X \$600.00).

1. Respondent, Grannan is hereby assessed forum fees in the amount of \$600.00 payable to the NASD, Inc.
2. Claimant, Merrill Lynch, is hereby assessed Forum Fees in the amount of \$600.00 for which the NASD shall retain the \$600.00 previously deposited by Claimant in full satisfaction thereof.
3. Respondent, Grannan, shall pay to the NASD an additional amount of \$500.00 which represents the non-refundable filing fee due to the NASD in connection with the filing of the Counterclaim.
4. The NASD shall retain the non-refundable filing fee of \$500.00 paid by Claimant.
5. The NASD shall retain the \$200.00 non-refundable member surcharge paid by the Claimant.

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

**ARBITRATORS**

**Concurring Arbitrators' Signatures**

/s/

\_\_\_\_\_  
A. William Cohen, Esq.

Industry/Chairman

/s/

\_\_\_\_\_  
James D. Bruner

Industry/Panelist

/s/

\_\_\_\_\_  
Michael N. Gonatos

Industry/Panelist

Date of Decision: August 9, 1996