

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Claimant,

and

No. 96-00613

Charles F. Murry,

Respondent,

REPRESENTATION OF PARTIES

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. was represented in pleadings by Stephen N. Gretchyn and at the hearing by George Dembski, Esquire, and Andrew Quizley, all of which are with Merrill Lynch, Pierce Fenner & Smith, Inc., located in New York, New York.

Respondent Charles F. Murry was represented by Thomas F. Hoarty, Jr., Esquire, of McGowan & Hoarty, located in Omaha, Nebraska.

CASE INFORMATION

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Statement of Claim was filed on or about February 9, 1996. Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement was signed on January 24, 1996, by Thomas W. Smith, First Vice President of Merrill Lynch, Pierce, Fenner & Smith, Inc.

Respondent Charles F. Murry's Statement of Answer was filed on or about April 9, 1996. Respondent Charles F. Murry's Submission Agreement was signed on April 9, 1996.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on December 10, 1996 for one (1) session.

The hearing was held in Omaha, Nebraska.

CASE SUMMARY

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Claimant") alleged that respondent Charles F. Murry ("Respondent") breached his agreement to repay the costs and expenses of his training. Claimant asserted that on or about September 6, 1994 Respondent became employed with Claimant, and as a condition of his employment Respondent voluntarily agreed to and executed Claimant's *Agreement to Repay Costs of Training* (the "Agreement"). According to Claimant, this agreement specified that if Respondent participated in Claimant's Training Program and thereafter resigned, provoked the termination of his employment, or was terminated for cause, within two years from the date he was assigned a production number, Respondent was to pay back reasonable costs and expenses which were incurred in his training as a registered representative, which included the salary paid to Respondent while in training. Claimant asserted that its cost in training Respondent was in the amount of \$38,000.00, which was to be reduced by \$19,000.00 one year after the date Respondent received his production number and then reduced to \$0 two years after the date he received his production number. Claimant stated that Respondent received his production number on or about June 5, 1995, and Respondent voluntarily resigned on or about June 23, 1995. Claimant alleged that Respondent refused to pay the agreed upon damages in the amount of \$38,000.00.

Respondent denied the claims for damages set forth in the Statement of Claim. Respondent specifically denied that the balance Claimant alleged it incurred in training Respondent was reasonable. Respondent stated that: Claimant's claim for damages was barred by the doctrine of estoppel; the amounts sought by Claimant constitutes a penalty, which was not permitted under Nebraska law; Respondents generated earnings for Claimant sufficient to offset any legitimate costs of training incurred by Claimant; and Claimant had received other benefits from the United States Government, or related entities, to defray any legitimate costs of training incurred by Claimant.

RELIEF REQUESTED

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. requested an award in the amount of \$38,000.00, plus costs of this proceeding.

Respondent Charles F. Murry requested that the claims asserted against him be dismissed and that he be awarded his costs and attorney fees.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

1. That respondent Charles F. Murry is liable for and shall pay claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. compensatory damages in the amount of \$15,836.00, plus simple interest thereon at the rate of 5.5% from the accrual date of July 25, 1995 until paid; and
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there was one (1) hearing session $\times \$600 = \600 in forum fees. Pursuant to §10205(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10205(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500 and shall **retain** as forum fees the amount of \$600 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. In addition, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** as forum fees the amount of \$300 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by respondent Charles F. Murry.

Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimant Merrill Lynch, Pierce, Fenner & Smith, Inc.

Signed:

Dated:

Patrick E. Hartigan, Esquire

Patrick E. Hartigan, Esquire

Industry Arbitrator, Presiding Chair

January 16, 1997

Roy J. Burr, Jr.

Roy J. Burr, Jr.

Industry Arbitrator

January 17, 1997

Richard L. Mitchell

Richard L. Mitchell

Industry Arbitrator

January 16, 1997

Date served by the NASD Regulation, Inc.: January 27, 1997