

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Stephen O. Orr,

Claimant,

v.

Case Number 96-02973

Merrill Lynch, Pierce, Fenner & Smith,
Inc., and Michael Ellis,

Respondents.

REPRESENTATION OF PARTIES

Claimant Stephen O. Orr ("Claimant") was represented by Scott D. Stechman, Esq. of Smith Campbell & Paduano located in New York, New York.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Michael Ellis ("Ellis") (collectively referred to as "Respondents") were represented by A. Inge Selden, III, Esq. and T. Louis Coppedge, Esq. of Maynard, Copper & Gale located in Birmingham, Alabama.

CASE INFORMATION

The Statement of Claim was filed on or about July 12, 1996.

Claimant's Submission Agreement was signed on or about July 11, 1996.

Respondents' Joint Statement of Answer was filed on September 11, 1996.

Respondent Merrill Lynch's Submission Agreement was signed on September 10, 1996 by Thomas W. Smith, First Vice President of Merrill Lynch. Respondent Ellis' Submission Agreement was signed on September 20, 1996.

Respondents' Motion to Dismiss Claimant's Wrongful Termination Claim was filed on or about March 5, 1997. Claimant's Response thereto was filed on or about March 10, 1997.

HEARING INFORMATION

The telephonic pre-hearing conference was held on March 3, 1997 for one (1) session.

The hearing was held on March 12, 1997 for two (2) sessions, March 13, 1997 for two (2) sessions, May 5, 1997 for two (2) sessions, May 6, 1997 for two (2) sessions, and May 7, 1997 for two (2) sessions.

The hearing location was New Orleans, Louisiana.

CASE SUMMARY

Claimant was a former registered representative with Respondent Merrill Lynch in its Jackson, Mississippi office (the "Jackson Office"). Respondent Ellis was the Senior Resident Vice President in the Jackson office and Claimant's Branch Manager. Claimant alleged that Respondent Merrill Lynch engaged in a campaign of oppressive, wrongful and malicious conduct toward Claimant which has significantly and detrimentally affected his ability to earn a living in his chosen profession, has caused him to suffer substantial emotional distress and public humiliation, and has severely damaged him and his family financially. Claimant contended that the wrongful acts perpetrated by Respondents against Claimant include, but are not limited to: (1) the improper firing of Claimant from his position as a Merrill Lynch registered representative in breach of an oral agreement between Claimant and Respondent Ellis; (2) the filing of a false Form U-5 which intentionally misrepresents the circumstances of the termination of his employment with Merrill Lynch and which prevented Claimant from obtaining another registered representative position with another wire house; (3) the repeated publication of false, malicious and defamatory statements about Claimant, including, his character, his handling of customer accounts while at Merrill Lynch, his status in the securities industry, and his marriage status; and (4) the unjustifiable closing of Claimant's Merrill Lynch checking/money market account.

Respondents denied all liability to Claimant in the Joint Statement of Answer. Respondents contended that Merrill Lynch retained the right to discharge Claimant at any time and for any reason because Claimant was an employee at will. Respondents asserted that Claimant was discharged for cause in October 1995 as a result of maintaining improper financial arrangements with a client and for accepting gifts in excess of \$50 from a client without making the proper reports. Respondents denied that its termination of Claimant was wrongful in any sense and maintained that Respondents followed the proper procedure in terminating Claimant from his

employment with Merrill Lynch. Respondents denied that Claimant was prevented from obtaining a copy of his Form U-5 or that any information contained therein is false. Respondents denied making any malicious or defamatory statements regarding Claimant. Respondents further denied that they unjustifiably closed Claimant's securities account without notice. Respondents alleged that at no time was Claimant treated differently or unfairly in comparison to other brokers in the Jackson office.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount not less than \$600,000.00, consequential and reputation damages, punitive damages, an Order of Expungement, costs and disbursements, including reasonable attorney fees, and ancillary relief.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

Respondents' Motion to Dismiss Claimant's Wrongful Termination Claim was denied without prejudice prior to the start of the hearing on the merits.

Motions were made by Claimant and Respondents with respect to certain hearsay evidence. The panel ruled unanimously that the panel would permit single hearsay, e.g. what a particular individual may have stated to a witness.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to Claimant Stephen O. Orr compensatory damages in the amount of Forty Five Thousand Two Hundred and Fifty Dollars and No Cents (\$45,250.00);
- (2) That all claims against Respondent Michael Ellis are hereby dismissed in their entirety with prejudice;
- (3) The panel finds that the disclosure reporting page (DRP-5) of the Uniform Termination Notice for the Securities Industries Registration (Form U-5) for Claimant dated November 20, 1995, inaccurately reflects the reason for Claimant's termination as set forth in Line 7. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall reform Item 7 to state the following: "Mr. Orr was terminated for violation of company policy. This matter did not involve the handling of a customer account"; and
- (4) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically enumerated are hereby dismissed in their entirety with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each pre-hearing session before a single arbitrator. There were ten (10) hearing sessions x \$1,000 = \$10,000 in forum fees. There was one (1) pre-hearing session x \$300 = \$300 in forum fees. Total forum fees = \$10,300. Pursuant to §10332(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 §10332(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 refund the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant.

Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the member surcharge in the amount of \$500.

Pursuant to §10332(c) of the Code, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for all forum fees incurred in this matter which is the amount of \$10,300.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

\s\ Lyman L. Jones, Jr., Esq.

Lyman L. Jones, Jr., Esq.
Chairperson
Public Arbitrator

May 27, 1997

Dated:

\s\ Clayton J. Borne, III, Esq.

Clayton J. Borne, III, Esq.
Panelist
Public Arbitrator

May 27, 1997

Dated:

\s\ Timothy B. Alack

Timothy B. Alack
Panelist
Industry Arbitrator

May 29, 1997

Dated:

For NASD Regulation use only:

Date award served on the parties: May 29, 1997