

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Keith Patrick Ligor

96-03186

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc  
Andrew P. Edelman

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REPRESENTATION

For Claimant: Steven G. Wenzel, Esq. of the law firm of Gonzalez and Wenzel, Tampa, Florida.

For Respondents: Bennett Falk, Esq. of the law firm of Morgan, Lewis & Bockius, LLP, Miami, Florida.

CASE INFORMATION

Statement of Claim filed: July 25, 1996.

Claimant's Submission Agreement signed on: July 23, 1996.

Joint Statement of Answer filed by Respondents on: September 18, 1996.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc's ("Merrill Lynch") Submission Agreement signed on: August 26, 1996.

The Respondent Andrew P. Edelman did not execute a Submission Agreement as required pursuant to Rule 10314 of the Code of Arbitration Procedure.

HEARING INFORMATION

One pre-hearing conference was conducted with the panel on January 6, 1997 and one pre-hearing conference was conducted with the Chairman on April 2, 1997. Five hearing sessions were conducted on April 17, 18 and 22, 1997 in Tampa, Florida.

### **CASE SUMMARY**

Claimant alleged he was discharged by Merrill Lynch, Pierce, Fenner & Smith, Inc. through Respondent Edelmann, its Branch Manager, who falsely claimed that Mr. Ligori had lied during an employment interview and Respondent Edelmann's assertion was placed on Claimant's U-5. Claimant next alleged in the ensuing New York Stock Exchange investigation, Merrill Lynch, Pierce, Fenner & Smith, Inc. stated that Claimant had falsified his U-4 which Claimant says is defamatory as well. Claimant further contended that the defamatory statements have blocked his securities industry employment and prevented him from serving his customers.

Respondents contended that Claimant was discharged from Merrill Lynch, Pierce, Fenner & Smith, Inc. less than 2 months after his hire because he failed to disclose, during his pre-employment interview, that he had a prior arrest record. Respondent next maintained upon Mr. Ligori's discharge, Merrill Lynch, Pierce, Fenner & Smith, Inc., in compliance with industry regulations, completed and filed a Form U-5 (Uniform Termination Notice for Securities Industry Registration) with the appropriate regulatory agencies, which stated as the reason for discharge, "Mr. Ligori was terminated when management learned that Mr. Ligori did not disclose his arrest record during his employment interview." Mr. Ligori contended that because of this entry on the Form U-5 his reputation in the community has been damaged, he is unable to obtain employment in the securities industry and is not eligible for acceptance in law school and Merrill Lynch, Pierce, Fenner & Smith, Inc.'s position is that they were required to complete the Form U-5 and they did so by accurately and truthfully stating the reason for Claimant's discharge.

### **RELIEF REQUESTED**

Claimant requested retraction of the defamatory statement on his U-5 form, restoration of registration with the Association and financial relief in the sum of \$2,380,600.00.

Respondent requested dismissal of all claims against them.

### **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 the NASD.

At the hearing, counsel for the Claimant informed the arbitration panel that he was withdrawing with prejudice his claim for wrongful termination.

### **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:

All claims by the Claimant against the Respondents be and hereby are dismissed in all respects.

The Claimant's requests for retraction of the defamatory statement on his U-5 form and restoration of registration with the Association are denied.

Each party shall bear their respective costs including attorneys' fees.

The panel of arbitrators further finds that Mr. Ligori was not required to disclose his arrest to Merrill Lynch, Pierce, Fenner & Smith, Inc. based upon the advice of his prior legal counsel that it was not necessary under the circumstances and the actual disposition of the case by the State Attorney who found no basis for proceeding against Mr. Ligori. Nonetheless, Merrill Lynch, Pierce, Fenner & Smith, Inc. had the right to require and demand candor in its interviewing process. Consequently, both parties were acting in a manner consistent with their understanding of the matter. Neither acted improperly nor with the intent to be untruthful.

However, the panel of arbitrators finds that it would have been more appropriate for Merrill Lynch, Pierce, Fenner & Smith Inc. to have included in paragraph 12, Reason for Termination, of the U-5 that Mr. Ligori did not disclose his arrest based on the advice of his legal counsel and that no charges were ever filed by the State of Florida. The panel of arbitrators does not find that the U-5 as written is defamatory, but rather that it could have been more explanatory so as to leave no room for misinterpretation by any subsequent employer. Mr. Edelmann, Branch Manager of Merrill Lynch, Pierce, Fenner & Smith Inc., believed that Mr. Ligori's reliance on counsel's advice was unacceptable to Mr. Edelmann as a reason for not divulging in the employment interviews the fact of an arrest. Consequently, Mr. Ligori was terminated. The panel finds that was a rather harsh approach, but not beyond the rights of Respondents.

Further, the U-5 form instructions at the heading do not permit an amendment of paragraph 12. It would seem that the practice of filing an "Amended" U-5 as to paragraph 12 is not consistent with the form's instructions. However, the NASD regulatory bodies appear to accept same for filing in spite of the instructions. This panel did not have evidence before it as to the ramifications of that procedure and considered the subsequent filing in the nature of a supplemental filing.

There was no credible, admissible evidence to prevent Mr. Ligori from being registered in the securities industry. In light of the confusion in this particular case, the arrest was a nominal matter that should not prevent Mr. Ligori from entering and enjoying a successful career as a securities broker. We would strongly recommend that any future employer disregard the U-5 entry as it is not as complete as was the evidence before this panel which found Mr. Ligori's conduct appropriate under the circumstances. In response to any future inquiries concerning Mr. Ligori's departure from Merrill Lynch, Pierce, Fenner & Smith Inc. the above findings shall also be disclosed if there is any reference to his arrest.

### FORUM FEES

Pursuant to Section 10205 of the Code of Arbitration Procedure, forum fees in the sum of \$6,300.00 are assessed as follows:

The Respondent Merrill Lynch is assessed \$6,300.00 for which NASD Regulation, Inc. shall retain the \$1,000.00 previously deposited in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. in the sum of \$5,300.00.

The Respondent Merrill Lynch is assessed the sum of \$500.00 representing the member surcharge pursuant to Rule 10333 of the Code of Arbitration Procedure.

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

#### Concurring Arbitrators' Signatures


Name	Public/Industry
/S/ _____ John P. Cullem, Esq.	Public
/S/ _____ Nicholas John Taldone, Esq.	Public
/S/ _____ Allison Hardage	Industry

Date of Decision: May 29, 1997

ARBITRATOR'S SIGNATURE

\_\_\_\_\_  
Edward M. Miller, Ph.D  
Public - Chairperson

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John P. Bannon  
Public Arbitrator

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O. Ray Vass  
Industry Arbitrator

Date of Decision 6/13/97

I, **Edward M. Miller, Ph.D**, 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.

\_\_\_\_\_  
Edward M. Miller, Ph.D  
Public - Chairperson

I, **John P. Bannon**, 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.

\_\_\_\_\_  
John P. Bannon  
Public Arbitrator

I, **O. Ray Vass**, 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.

\_\_\_\_\_  
O. Ray Vass  
Industry Arbitrator