

NASD AWARD

NASD Regulation, Inc. Office of Dispute Resolution

---

In the Matter of the Arbitration Between

Name of Claimants

Merrill Lynch Pierce Fenner & Smith Inc  
Michael W. Reese

96-04407

Name of Respondent

Gregory C. Alexander

Name of Third-Party Respondent

Walter Michael Welsh

---

REPRESENTATION

Claimants Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Michael W. Reese ("Reese") as well as Third-Party Respondent Walter Michael Welsh ("Welsh") were represented by Michael J. Fortunato, Esq. of the law firm of Rubin & Associates, PC, Paoli, PA.

Respondent Gregory C. Alexander ("Alexander") was represented by Charles M. Dalziel, Esq. of the law firm of Savell & Williams, LLP, Atlanta, GA.

CASE INFORMATION

Statement of Claim filed: October 2, 1996.

Amended Statement of Claim filed: January 17, 1997.

Claimant Merrill Lynch's Submission Agreement signed on: October 2, 1996.

Claimant Reese's Submission Agreement signed on: October 16, 1996.

Statement of Answer, Counterclaim, and Third-Party Claim filed by Respondent Alexander on: December 20, 1996.

First Amended Statement of Answer, Counterclaim, and Third-Party Claim filed by Respondent Alexander on: June 3, 1997.

Supplement and Second Amendment to Third-Party Claim filed by Respondent Alexander on: September 11, 1997.

Respondent Alexander did not sign a Submission Agreement.

Reply of Merrill Lynch to Counterclaim and Statement of Answer filed by Third-Party Respondent Welsh

on: January 30, 1997.

Reply of Merrill Lynch and Reese and Answer of Third-Party Respondent Welsh to Amended Counterclaim filed on: June 16, 1997.

Third-Party Respondent Welsh's Submission Agreement signed on: February 18, 1997.

### HEARING INFORMATION

Pre-Hearing Dates/Sessions:           October 22, 1997 - one session with the Panel  
                                                  January 26, 1998 - one session with the Chairperson only

Hearing Dates/Sessions:           March 31, 1998 - two sessions  
                                                  April 1, 1998 - two sessions  
                                                  April 2, 1998 - two sessions  
                                                  April 3, 1998 - two sessions  
                                                  May 12, 1998 - two sessions  
                                                  May 13, 1998 - two sessions  
                                                  May 14, 1998 - two sessions

Hearing Location: Terrace Garden Hotel, Atlanta, GA

---

### CASE SUMMARY

---

Claimant Merrill Lynch alleged that, after termination of his employment with Merrill Lynch, Respondent Alexander violated the terms and conditions of the non-solicitation and non-disclosure provisions contained in the Financial Consultant Trainee Agreement. Claimant Merrill Lynch alleged that Alexander signed the Financial Consultant Trainee Agreement at the outset of and as a condition of his employment with Merrill Lynch. Merrill Lynch also alleged that Alexander breached certain other confidentiality/non-disclosure agreements that he executed as a condition of his employment with Merrill Lynch. Merrill Lynch further alleged that Alexander misappropriated and converted certain Merrill Lynch trade secret customer information and engaged in unfair competition. Claimants Merrill Lynch and Reese also sought a declaration of non-liability with respect to an alleged "General Partnership Agreement" by and between Respondent Alexander and Claimant Reese.

Respondent Alexander denied all material allegations set forth in Claimants Merrill Lynch and Reese's Amended Statement of Claim. Alexander denied that he had breached any enforceable contract, misappropriated or converted any trade secret, customer list, or confidential business information which was the property of Merrill Lynch, or engaged in unfair competition. Alexander asserted counterclaims against Merrill Lynch and Reese, and a third-party claim against Welsh. Alexander's claims against Merrill Lynch included an alleged breach of a General Partnership Agreement and violations of the Georgia Uniform Partnership Act, fraud, unlawful retention of property, breach of implied contract, and violations of the Fair Credit Reporting Act. Alexander's claims against Reese included breach of a General Partnership Agreement and violations of the Georgia Uniform Partnership Act, slander per se, fraud, and unlawful retention of property. Alexander's claims against Welsh included an alleged breach of Rule 2110 of the NASD Conduct Rules, fraud, and negligent supervision. Alexander alleged that a General Partnership Agreement was made between him and Reese while both were employed as senior financial consultants with Merrill Lynch. Alexander alleged that, upon refusing to give up his rights

under the General Partnership Agreement, he was fired by Reese without being given a chance to retrieve his personal items and records or any information of any type. Alexander alleged that his termination violated the implied contract that he had with Merrill Lynch concerning his expectancy to receive in the future the benefits of his employment with Merrill Lynch so long as he met its goals for him concerning production. Alexander alleged that, after his termination, Reese and Merrill Lynch attempted to commandeer all of the partnership accounts for themselves even though the agreement specifically provided that each partner would keep his pre-partnership clients upon termination of the partnership, and that the clients of the partnership would be split equally based on asset volume. Alexander alleged that Welsh knowingly allowed Reese to terminate the partnership with Alexander without notice and without division of the clients as required under the Partnership Agreement and assisted Reese in excluding Alexander from the business opportunities that he had developed with the clients of the partnership.

Merrill Lynch, Reese, and Welsh denied all material allegations set forth in Alexander's claims. Merrill Lynch specifically maintained that it was never a party to any Partnership Agreement. Merrill Lynch maintained that Alexander had no implied contract of employment with it and was merely an at-will employee. Welsh specifically denied that he had any duties with respect to Alexander and that, even if he did, he did not violate any of those unspecified duties.

#### RELIEF REQUESTED

Claimant Merrill Lynch requested compensatory damages for Alexander's breaches of his Financial Consultant Trainee Agreement, misappropriation and conversion of trade secret customer information, and unfair competition in an amount not less than \$100,000.00. Merrill Lynch and Reese sought a declaration of non-liability with respect to the "General Partnership Agreement." Merrill Lynch, Reese, and Third-Party Respondent Welsh requested that all of Alexander's claims be dismissed in their entirety and requested costs, fees, and interest according to law.

Respondent Alexander requested that Merrill Lynch and Reese's claims be dismissed in their entirety. Alexander requested that the Panel enter an award in favor of Alexander and against Merrill Lynch in a total amount not less than \$2 million. Alexander requested compensatory damages against Reese and further requested specific performance requiring Reese to abide by the provisions of the Partnership Agreement with respect to the division of the clients upon termination of the partnership. Alexander also requested compensatory damages from Welsh. Alexander further requested that he be granted an award for his expenses of litigation including reasonable attorneys' fees, and for punitive damages, and that Alexander be granted such other and further relief as the Panel deems proper.

#### OTHER ISSUES CONSIDERED & DECIDED

On March 31, 1998, the Panel decide that a partnership agreement existed between Reese and Alexander.

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 NASD Regulation, Inc.

The Panel determined that notwithstanding Respondent Alexander's failure to execute a submission agreement that, pursuant to Rule 10301 of the Code of Arbitration Procedure, Respondent Alexander was

required to submit to the Panel's jurisdiction and Respondent Alexander submitted an answer and participated at the hearing. Therefore, the Panel exercised its jurisdiction over Alexander and he is bound by the Panel's rulings and determinations herein.

#### **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. That the claims of Claimants Merrill Lynch and Michael W. Reese are denied in its entirety.
2. That Merrill Lynch and Michael W. Reese are jointly and severally liable to Respondent Gregory C. Alexander in the amount of \$53,704.00 under the Partnership Agreement; no pre-judgment interest is awarded on this amount.
3. That Gregory C. Alexander is awarded \$45,000.00 in attorney's fees from Merrill Lynch only. The Panel determined that Attorneys' fees are awardable pursuant to O.C.G.A. Sections 13-6-11 and 9-15-14.
4. That Gregory C. Alexander is awarded \$12,000.00 for costs and expenses of litigation from Merrill Lynch only.
5. Other Costs and Forum Fees are addressed below.
6. Any and all claims for relief not specifically addressed herein are denied in their entirety.

#### **OTHER COSTS**

Pursuant to Rule 10333 of the Code of Arbitration Procedure, Claimant Merrill Lynch has paid to NASD Regulation, Inc. the \$300 member surcharge previously invoiced.

#### **FORUM FEES**

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

$(1 \text{ prehearing session with the Panel} \times \$1000.00) + (1 \text{ prehearing session with the Chairperson only} \times \$300.00) + (14 \text{ hearing sessions} \times \$1000.00) = \$15,300.00$  minus Claimant Merrill Lynch's hearing session deposit of \$600.00 and minus Respondent Alexander's hearing session deposit of \$1500.00 = \$13,200.00 balance due to NASD Regulation, Inc.

Claimant Merrill Lynch is assessed all forum fees and shall pay to NASD Regulation, Inc. the forum fee balance of \$13,200.00. Claimant Merrill Lynch is directed to reimburse Respondent Alexander his hearing session deposit of \$1500.00.

DATE SIGNED

7-11-98

Concurring Arbitrators' Signatures

Chandler Bridges  
Chandler Bridges, Esq., Chairperson  
Public Arbitrator

Frank W. Virgin, Esq., Panelist  
Public Arbitrator

Chesley V. Morton, Jr., Panelist  
Industry Arbitrator

Date Award Served by NASD Regulation:

July 2, 1998

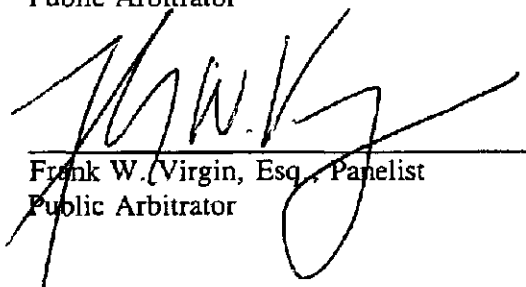
DATE SIGNED

Concurring Arbitrators' Signatures

\_\_\_\_\_

Chandler Bridges, Esq., Chairperson  
Public Arbitrator

6/29/98

  
Frank W. Virgin, Esq., Panelist  
Public Arbitrator

\_\_\_\_\_

Chesley V. Morton, Jr., Panelist  
Industry Arbitrator

Date Award Served by NASD Regulation: July 21/1998

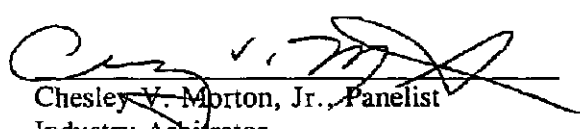
DATE SIGNED

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Chandler Bridges, Esq., Chairperson  
Public Arbitrator

\_\_\_\_\_  
Frank W. Virgin, Esq., Panelist  
Public Arbitrator

6-27-98

  
Chesley V. Morton, Jr., Panelist  
Industry Arbitrator

Date Award Served by NASD Regulation: July 2, 1998