

**AWARD**

**NASD REGULATION, INC.**

In the matter of the Arbitration Between

**Name of Claimant**

Nico F. March

v.

Arbitration No.  
96-04966

**Name of Respondent**

Merrill Lynch, Pierce, Fenner & Smith, Inc.

v.

**Name of Third Party Respondent**

Prudential Securities, Inc.

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**REPRESENTATION**

For Claimant:

Michael Blumenfeld  
Freeman, Freeman & Smiley, LLP  
Los Angeles, California

For Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.:

Terry E. Sanchez, Esq.  
Munger, Tolles & Olson  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed:

November 6, 1996

Claimant's Submission Agreement signed:

December 13, 1996

Respondent Merrill Lynch, Pierce, Fenner  
& Smith, Inc.'s Answer, Counter-Claim and  
Third Party Claim filed:

March 3, 1997

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed:	March 3, 1997
Respondent Prudential Securities, Inc.'s Submission Agreement signed:	April 7, 1997
Answer of Third-Party Respondent Prudential Securities, Inc. filed:	April 22, 1997
Claimant and Counter-Respondent Nico F. March's Answer to Counter-Claim filed:	June 17, 1997

### **HEARING INFORMATION**

Pre-Hearing Conference Date / Session:	July 14, 1997 (1 Session)
Hearing Dates / Sessions:	February 22, 1999 (2 Sessions) February 23, 1999 (2 Sessions) February 24, 1999 (2 Sessions) February 25, 1999 (2 Sessions) February 26, 1999 (2 Sessions) July 12, 1999 (1 Session)
Hearing Location:	Los Angeles, California

### **CASE SUMMARY**

Claimant alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. engaged in defamation, intentional interference with prospective economic advantage, wrongful constructive discharge, injury to reputation, harassment, and disparagement.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. denied the allegations of wrongdoing found in the Claimant's Statement of Claim. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. also filed a Counter-Claim against Nico F. March and a Third-Party Claim against Prudential Securities, Inc. for breach of contract, tortious and intentional interference, unfair competition, and conspiracy.

Third-Party Respondent Prudential Securities, Inc. denied the allegations found in Third-Party Claimant Merrill Lynch, Pierce, Fenner & Smith Inc.'s Counter-Claim.

Counter-Respondent Nico F. March denied the allegations of wrongdoing found in Third-Party Claimant Merrill Lynch, Pierce, Fenner & Smith Inc.'s Counter-Claim

### **RELIEF REQUESTED**

Claimant sought actual damages for lost income of \$500,000.00, damages for alleged injury to Claimant's reputation of \$300,000.00 and punitive damages of \$1,500,000.00.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested that Claimant take nothing by way of his Statement of Claim and sought an award of costs and attorney's fees. In their Counter-Claim and Third-Party Claim, Merrill Lynch, Pierce, Fenner & Smith, Inc. sought compensatory damages of \$750,000.00, costs and interest.

Third-Party Respondent Prudential Securities, Inc. requested that all of Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Claims be denied in their entirety and sought an award of attorney's fees and costs.

Counter-Respondent Nico F. March requested dismissal of Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Counter-Claim and sought an award of costs and attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be executed either 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 remains on file with the NASD Regulation, Inc., Office of Dispute Resolution.

On February 1, 1999, Respondent and Third-Party Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. withdrew, with prejudice, its Counter-Claim against Nico F. March and its Third-Party Claim against Prudential Securities, Inc.

### 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.'s Motion for Nonsuit is granted. All of the Claimant's Claims are denied in their entirety.
- 2) The parties shall each bear their respective costs, including attorney's fees.
- 3) All relief not expressly granted is denied.

### FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

One Pre-Hearing Conference Session @ \$1,000.00 / Session	= \$ 1,000.00
<u>Eleven Hearing Sessions @ \$1,000.00 / Session</u>	<u>= \$11,000.00</u>
Total Fees Assessed	= \$12,000.00

Claimant's 60% Share of Forum Fees	= \$ 7,200.00
<u>Credit for Claimant's Hearing Session Deposit</u>	<u>= \$ 1,000.00</u>
Claimant's Balance Due	= \$ 6,200.00

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s	
40% Share of Forum Fees	= \$ 4,800.00
<u>Credit for Payment made on March 3, 1999</u>	<u>= \$ 100.00</u>
Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s	
Balance Due	= \$ 4,700.00

Fees are payable to NASD Regulation, Inc.

### OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. has paid to NASD Regulation, Inc. the \$ 500.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the Code, Respondent Prudential Securities, Inc. shall pay to NASD Regulation, Inc. the \$500.00 past due member surcharge previously invoiced.

ARBITRATORS

Name

Franklin G. Allen, Esq.

Gunnar Thowsen

Irwin S. Sugerman


Public / Industry

Public Arbitrator

Industry Arbitrator

Public Arbitrator

Concurring Arbitrators' Signatures

  
Franklin G. Allen, Esq.

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Gunnar Thowsen

\_\_\_\_\_  
Irwin S. Sugerman

Date of Service:

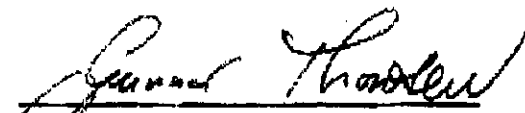
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## ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Franklin G. Allen, Esq.	Public Arbitrator
Gunnar Thowsen	Industry Arbitrator
Irwin S. Sugerman	Public Arbitrator

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Franklin G. Allen, Esq.

  
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Gunnar Thowsen

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Irwin S. Sugerman

Date of Service: 7/13/99

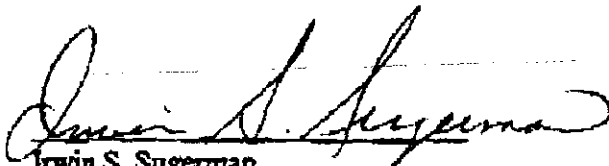
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<u>Name</u>	<u>Public / Industry</u>
Franklin G. Allen, Esq.	Public Arbitrator
Gunnar Thowsen	Industry Arbitrator
Irwin S. Sugarman	Public Arbitrator

Concerning Arbitrators' Signatures

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Franklin G. Allen, Esq.

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Gunnar Thowsen

  
Irwin S. Sugarman

Date of Service: 7/13/99