

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Merrill Lynch Pierce Fenner & Smith, Inc.

vs.

Name of Respondent

Case No. 96-05139

Shawn Hartpence

REPRESENTATION

For Claimant Merrill Lynch Pierce Fenner & Smith ("Claimant") appeared Christopher Coss, Esq. of the law offices of Rubin & Associates, P.C., located in Paoli, Pennsylvania.

For Respondent Shawn Hartpence ("Respondent") appeared Andrew W. Sidman, Esq. of the law offices of Butler Fitzgerald & Potter, located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on: November 14, 1996.
Claimant's Submission Agreement was signed on: October 18, 1996.

Respondent's Statement of Answer was filed on: September 24, 1997.
Respondent's Submission Agreement was signed on: October 6, 1997.

Claimant's Amended Statement of Claim was filed on: January 20, 1999.
Respondent's Answer to Claimant's Amended Statement of Claim was filed on:
March 11, 1998

HEARING INFORMATION

Pre-Hearing Conferences:	August 13, 1997	-	1 session
	January 26, 1998	-	1 session
	January 29, 1998	-	1 session
	March 26, 1998	-	1 session
	April 28, 1998	-	1 session
	January 21, 1999	-	1 session

Hearing Dates/Sessions:	April 29, 1998	-	2 sessions
	April 30, 1998	-	2 sessions
	May 13, 1998	-	2 sessions
	May 14, 1998	-	2 sessions
	August 10, 1998	-	2 sessions
	August 11, 1998	-	2 sessions
	March 30, 1999	-	2 sessions
	May 17, 1999	-	2 sessions

The hearings were conducted at the offices of NASD Regulation, Inc., located in New York, New York.

CASE SUMMARY

Claimant alleged that, on or about January 1, 1995, Respondent was hired by Claimant as a Financial Consultant after Claimant reasonably relied upon certain material representations made by Respondent regarding his past employment performance. Claimant contended that, based upon Respondent's representation, it agreed to the following terms: (1) to hire and continue to employ Respondent; (2) to pay Respondent an upfront forgivable loan of \$360,000.00; (3) to pay a headhunting fee of \$39,000.00 for recruiting Respondent; and (4) to pay Respondent a monthly salary of \$12,500.00 for 17 months and a monthly salary of \$2,000.00 thereafter. Claimant alleged that, had it known the true facts about Respondent and his performance at Kidder Peabody & Company ("Kidder"), Claimant would not have hired him, nor would have Claimant paid in excess of \$600,000.00 to secure his employment. Claimant alleged that Respondent willfully misrepresented his performance at Kidder, the prospects of his future work productivity, and his general employment history.

Respondent maintained that Claimant's claims of misrepresentations and/or omissions are groundless. Respondent alleged that, prior to his employment with Claimant, he was a very successful producer who had been employed at Kidder for the past eight years. Respondent further contended that Claimant aggressively recruited him. Respondent maintained that, on or about January 1995, Claimant made a number of promises that were intended to induce him to forego a lucrative opportunity elsewhere and to accept employment with Claimant. Respondent also contended that, during the ensuing period of about eighteen months, Claimant failed to honor a number of these promises. Respondent also maintained that because Claimant breached promises, Claimant had no right to recover any excess compensation. Respondent alleged that Claimant's misrepresentations and breaches of the employment agreement caused him to suffer substantial damages.

RELIEF REQUESTED

Claimant requested actual damages in excess of \$400,000.00.

Respondent requested actual damages in excess of \$400,000.00.

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 originals remain on file with NASD Regulation, Inc.

On January 13, 1998, Claimant submitted a Motion for Leave to Amend the Statement of Claim. The parties were notified by letter dated February 17, 1998 that, after due deliberation and consideration of all submissions and arguments heard regarding Claimant's Motion to Amend, the arbitrators had determined to grant the Motion.

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 be and hereby is liable for and shall pay to Claimant the sum of **(\$342,902.77) THREE HUNDRED FORTY TWO THOUSAND, NINE HUNDRED TWO DOLLARS AND SEVENTY SEVEN CENTS**, plus prejudgment interest for the period from September 13, 1996 to May 17, 1999.
2. Respondent's Counterclaims be and hereby are dismissed in their entirety.
3. All other requests are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure ("Code"), Claimant has paid NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10205(c) of the Code, the arbitrators have determined that NASD Regulation, Inc. will retain the \$500.00 non-refundable filing fee paid by Claimant and the \$500.00 non-refundable Counter-Claim filing fee submitted paid by Respondent.

The arbitrators have determined to assess the Forum Fees associated with this matter equally, as follows:

1 Pre-Hearing Conference (full panel) X \$750.00	=	\$ 750.00
5 Pre-Hearing Conferences (1 arb) X \$300.00	=	\$ 1,500.00
16 Hearing Sessions x \$750.00	=	<u>\$12,000.00</u>

Total Forum Fees

= \$14,250.00

1. Claimant be and hereby is liable for the sum of \$7,125.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation, Inc. and therefore, shall pay the balance of \$6,375.00 to NASD Regulation, Inc.
2. Respondent be and hereby liable for the sum of \$7,125.00, representing one-half of the total amount of forum fees assessed. The Respondent previously deposited \$750.00 with NASD Regulation, Inc. and, therefore, shall pay the balance of \$6,375.00 to NASD Regulation, Inc.

ARBITRATION PANEL

Richard S. Peskin, Esq. - Public/Industry Chairperson
Thomas A. Turley - Public Arbitrator
Jeffrey P. Flynn, Esq. - Industry Arbitrator

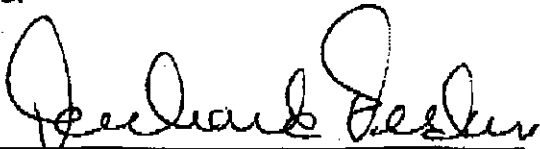
CONCURRING ARBITRATOR'S SIGNATURE



Richard S. Peskin, Esq.
Chairperson--Public Arbitrator

Date of decision: June 25, 1999

I, Richard S. Peskin, 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.

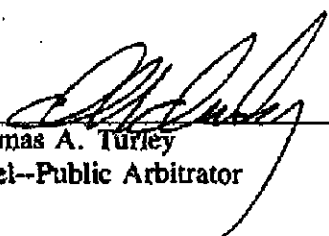


Richard S. Peskin, Esq.

ARBITRATION PANEL

Richard S. Peskin, Esq. - Public/Industry Chairperson
Thomas A. Turley - Public Arbitrator
Jeffery P. Flynn, Esq. - Industry Arbitrator

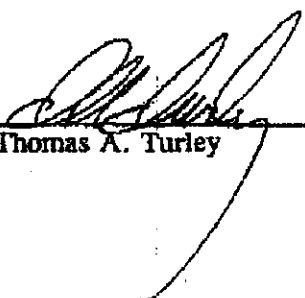
CONCURRING ARBITRATOR'S SIGNATURE



Thomas A. Turley
Panel--Public Arbitrator

Date of decision: June 25, 1999

I, Thomas A. Turley, 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.

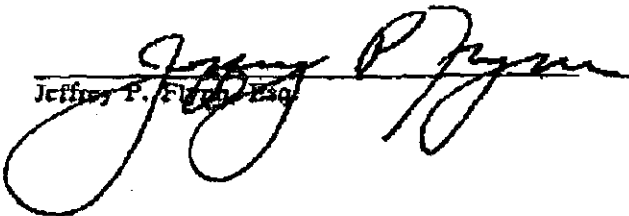


Thomas A. Turley

ARBITRATION PANEL

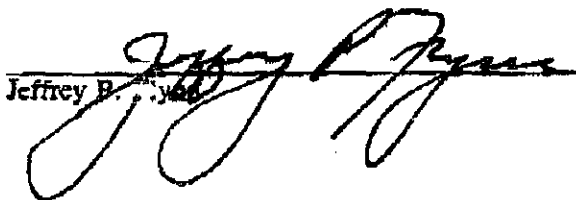
Richard S. Perkin Esq. - Public/Industry Chairperson
Thomas A. Turley - Public Arbitrator
Jeffrey P. Flynn, Esq. - Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE


Jeffrey P. Flynn, Esq.

Date of decision: June 25, 1999

I, Jeffrey P. Flynn, 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.


Jeffrey P. Flynn