

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

James P. Hall, and  
Mark Erik Hume,

Claimants,

v.

No. 97-00091

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
& David McWilliams,

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimants James P. Hall ("Hall") and Mark Erik Hume ("Hume") (collectively referred to as "Claimants") were represented by David M. Black, Esq. and Joseph A. Golden, Esq. of Sommers, Schwartz, Silver & Schwartz, P.C. located in Southfield, Michigan.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and David McWilliams ("McWilliams") (collectively referred to as "Respondents") were represented by Raymond J. Carey, Esq. of Durvin, Cahn & Hutton located in Detroit, Michigan.

### **CASE INFORMATION**

The Statement of Claim was filed on or about January 8, 1997.

Claimants' Submission Agreement was signed on December 13, 1996.

The Joint Statement of Answer was filed on or about May 5, 1997.

Respondent Merrill Lynch's Submission Agreement was signed on April 28, 1997 by Thomas W. Smith, First Vice President of Merrill Lynch.

Respondent McWilliams' Submission Agreement was signed on July 7, 1997.

### **HEARING INFORMATION**

The hearing was held on January 20, 1998 for three (3) sessions; January 21, 1998 for two (2) sessions; February 23, 1998 for two (2) sessions; and February 24, 1998 for three (3) sessions.

The hearing location was Southfield, Michigan.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted that they were employed as stockbrokers with Merrill Lynch in its Bloomfield Hills, Michigan office. Claimants contended that they were exemplary employees who developed many customers and successfully conducted the business of their employer. Specifically, Claimants alleged that they successfully marketed a program to General Motors with which General Motors executives could exercise their stock options. Claimants contended that Respondent McWilliams, a branch manager at Merrill Lynch's Bloomfield Hills office, wrongfully terminated Claimants from their employment solely to enable Respondent McWilliams to gain benefits from the stock option program procured by Claimants. Claimants asserted that in completing Claimants' U-5 forms, Merrill Lynch has wrongfully and maliciously checked the box stating that at termination Claimants were "under internal review for fraud or wrongfully taking property, or violating investment-related statutes, regulations, rules or industry standards of conduct." Claimants contended that as a result of Merrill Lynch's wrongful conduct, Claimants have been damaged monetarily and personally. Claimants maintained that though Claimants were able to find new employment, their earnings and benefits are less.

Respondents denied all liability to Claimants in the Joint Statement of Answer. Respondents alleged that Claimants were terminated for fraud, dishonesty, and for violation of the Merrill Lynch Principle of Integrity. Respondents contended that Claimant Hume falsely represented

himself as Claimant Hall's employer and inflated Hall's salary so that Hall could obtain a mortgage. Respondents alleged that Claimants' actions violated company policy. Respondents asserted that the decision to terminate Claimants was made after careful discussion with Merrill Lynch's Human Resources Department, Compliance, and Legal Department. Respondents maintained that contrary to Claimants' claims, General Motors chose Merrill Lynch because of its resources and reputation, rather than because it wanted to work with Claimants. Respondents alleged that the reason for Claimants' termination was properly and accurately reported on their Form U-5.

### **RELIEF REQUESTED**

Claimants requested an award requiring Respondents: (1) to account for and pay Claimants all commissions to which they otherwise would have been entitled but for the tortuous termination; (2) to pay monetary damages in such amounts as are proved for defaming Claimants; (3) to pay exemplary damages due to the extreme and outrageous and malicious nature of the defamation; (4) to pay Claimants' attorney fees and costs; (5) to require Merrill Lynch to amend the U-5 statements; (6) to require Merrill Lynch to make an apology published in national publications; and (7) to provide such other relief as is just.

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

### **OTHER ISSUES CONSIDERED & DECIDED**

At the close of Claimants' case, Respondents made a motion to dismiss which was denied by unanimous decision.

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) That Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. & David McWilliams are jointly and severally liable for and shall pay to Claimant James P. Hall compensatory damages in the amount of \$86,000.00;
- (2) That Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. & David McWilliams are jointly and severally liable for and shall pay to Claimant Mark Erik Hume compensatory damages in the amount of \$86,000.00;
- (3) That Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. shall take appropriate steps to withdraw and/or amend the U-5 filed with respect to James P. Hall and Mark Erik Hume to amend item 15 to reflect a "no" response and item 12 to reflect that James P. Hall and Mark Erik Hume were discharged as a result of an internal policy dispute. Respondent Merrill Lynch shall withdraw the DRP 5 filed in connection therewith;
- (4) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter; and
- (5) That any relief not specifically enumerated is hereby denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were ten (10) hearing sessions x \$600 = \$6,000 in forum fees. Total forum fees = \$6,000. Pursuant to §10205(b) of 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 §10205(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 \$600 previously deposited by the Claimant.

Pursuant to §10205(c) of the Code, Respondents are jointly and severally liable for and shall pay forum fees in the amount of \$6,000 (total forum fees).

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

Concurring Arbitrators' Signatures:

**1s\ Stanley H. Michelstetter, II, Esq.**  
Stanley H. Michelstetter, II, Esq.  
Chairperson  
Public Arbitrator

**March 6, 1998**  
Dated:

**1s\ Gordon F. Knight, Ph.D**  
Gordon F. Knight, Ph.D  
Panelist  
Public Arbitrator

**March 3, 1998**  
Dated:

**1s\ Bruce F. Coleman**  
Bruce F. Coleman  
Panelist  
Industry Arbitrator

**March 9, 1998**  
Dated:

For NASD Regulation use only:

Date award served on parties: **March 12, 1998**