

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Merrill Lynch, Pierce, Fenner & Smith, Inc.

vs.

Case No.  
98-00371

Name of Respondent

Michael Sargenti

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**REPRESENTATION**

For Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Claimant") appeared Meg E. Sobel, Esq., of Jaffe & Asher, located in New York, New York.

Respondent Michael D. Sargenti ("Respondent") appeared *pro se*.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on January 29, 1998.

Claimant's Submission Agreement was signed on January 26, 1998.

Respondent did not file a Statement of Answer or a Submission Agreement.

**HEARING INFORMATION**

Pre-Hearing Conference: May 10, 1999 (Full Panel)

Hearing Date/Session: July 9, 1999 (1 Session)

The pre-hearing conference was held telephonically. The hearing was conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### CASE SUMMARY

Claimant alleged that Respondent was hired as a Financial Consultant on or about July 2, 1997. On August 18, 1997, Claimant maintained it loaned Respondent \$60,000.00 and, in return, he executed a promissory note ("note") to secure the loan. Claimant alleged that Respondent terminated his employment on or about September 2, 1997 and an unpaid balance of \$60,000.00, plus interest remained due on the note.

### RELIEF REQUESTED

Claimant requested the following:

1. An award in the sum of \$60,000.00 plus interest at an annual rate of 7.875%;
2. Assessment of the costs and disbursements of this proceeding against the Respondent.

### 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 remains on file with NASD Regulation, Inc.

The panel made the following determinations concerning Michael Sargenti who did not file a Statement of Answer or a Submission Agreement and did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the NASD Code of Arbitration Procedure (the "Code"), the arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that Michael D. Sargenti was a person associated with a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Michael Sargenti pursuant to Rule 10301 of the Code.
3. The panel found that Michael D. Sargenti was required to file a Statement of Answer and Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Michael D. Sargenti pursuant to Rule 10314 (a) of the Code.
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided Michael D. Sargenti with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Michael D. Sargenti whose absences were unexcused.

### 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 is hereby liable and shall pay Claimant compensatory damages in the amount of \$60,000.00.
2. Respondent is hereby liable and shall pay interest in the amount of \$8,932.00, accruing from August 18, 1997 until July 9, 1999.
3. Respondent is hereby liable and shall pay Claimant \$5,000.00 for attorney's fees. The Panel awarded attorney's fees based upon the contract agreement provided in the Statement of Claim.
4. All other claims are hereby denied.

### OTHER COSTS

Pursuant to Rule 10333 of the *NASD Code of Arbitration Procedure* ("Code") Merrill Lynch, Pierce and Fenner has paid NASD Regulation, Inc. the \$1,000.00 member surcharge previously invoiced.

### FORUM FEES

Pursuant to Rule 10332(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 have assessed the following Forum Fees:

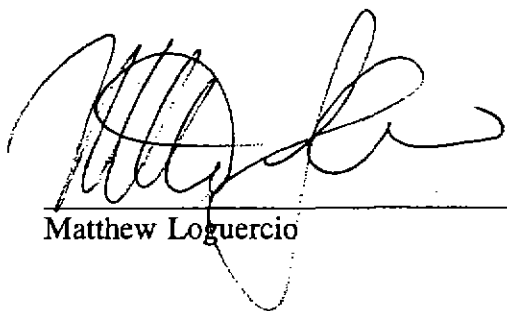
1 Pre-Hearing Session (Full Panel) x \$600.00	=	\$600.00
1 Hearing Session x \$600.00	=	<u>\$600.00</u>
Total	=	\$1,200.00

Respondent is hereby liable and shall pay NASD Regulation, Inc. the sum of \$1,200.00, representing the total forum fees assessed.

**ARBITRATION PANEL**

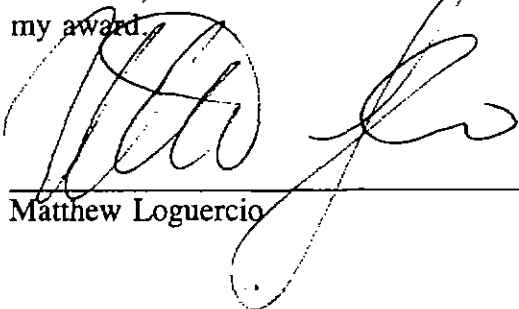
J. Julie Jason, Esq.	-	Industry Chairperson
Leonard M. Bakal, Esq.	-	Industry Arbitrator
Matthew Loguercio	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
Matthew Loguercio

Date of decision: August 6, 1999

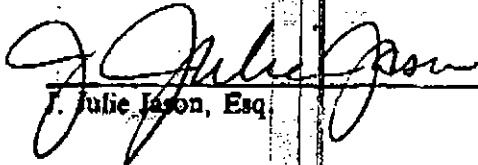
I, **Matthew Loguercio**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Matthew Loguercio

**ARBITRATION PANEL**

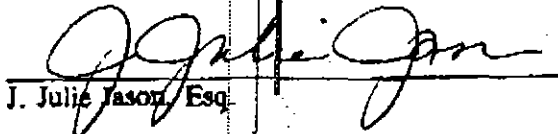
J. Julie Jason, Esq.	-	Industry Chairperson
Leonard M. Bakal, Esq.	-	Industry Arbitrator
Matthew Loguercio	-	Industry Arbitrator

**CONCURRING ARBITRATOR'S SIGNATURE**

  
J. Julie Jason, Esq.

Date of decision: August 6, 1999


I, J. Julie Jason, Esq., 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.

  
J. Julie Jason, Esq.

ARBITRATION PANEL

J. Julie Jason, Esq.	-	Industry Chairperson
Leonard M. Bakal, Esq.	-	Industry Arbitrator
Matthew Loguercio	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



Leonard M. Bakal, Esq.

Date of decision: August 6, 1999

I, Leonard M. Bakal, Esq., 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.



Leonard M. Bakal, Esq.