

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Bruce Orenstein, (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith Inc. and Linda Houston, (Respondents)

Case Number: 99-04630

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Bruce Orenstein, hereinafter referred to as "Claimant": Joel E. Davidson Esq., Law Office of Joel E. Davidson, Esq., P.C, New York, NY.

Respondents, Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill") and Linda Houston ("Houston"), hereinafter collectively referred to as "Respondents": Robert S. Whitman, Esq., Orrick, Herrington & Sutcliffe LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim and Demand for Interim Injunctive Relief filed on or about: October 13, 1999.

Affirmation filed by Claimant on or about: October 18, 1999.

Claimant signed the Uniform Submission Agreement: October 13, 1999.

Response to Demand for Interim Injunctive Relief filed by Respondents on or about: October 18, 1999.

Joint Statement of Answer filed by Respondents on or about: November 29, 1999.

Merrill signed the Uniform Submission Agreement: November 24, 1999.

Houston signed the Uniform Submission Agreement: November 23, 1999.

**CASE SUMMARY**

Claimant asserted the following causes of action: wrongful termination; intention to file a defamatory U-5; and discrimination.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's discrimination claim is barred because of Claimant's failure to file a charge of discrimination with the Equal Employment Opportunity Commission; Claimant is not entitled to an award of punitive damages or attorneys' fees under the New York Human Rights Law; Claimant was an at-will employee who was subject to termination at any time and for any reason, with or without

notice; the claim of defamation is barred by an absolute or qualified privilege; Respondents did not act unlawfully toward Claimant in any way; Claimant is not entitled to an award of attorneys' fees and costs; even if Claimant prevails on the merits, he is not entitled to an award of punitive damages; and Claimant fails to state a claim upon which relief can be granted.

### **RELIEF REQUESTED**

Claimant requested the following relief:

1. An injunction prohibiting Merrill from filing a defamatory U-5;
2. *An injunction preventing Merrill from taking any legal action against Claimant, except in this forum;*
3. An injunction preventing Merrill and/or its employees or agents or attorneys from initiating any contact with any client serviced by Claimant for the purpose of trying to generate any complaints against Claimant;
4. For an order prohibiting Merrill and its employees, including but not limited to Houston, from destroying any notes or documents pertaining in any way to Claimant, his performance, his conduct, any investigation of him, or any communication between any Merrill employee and any client serviced by Claimant;
5. For an order directing Merrill to file an amended U-5 in a form acceptable to the Panel; and
6. For an Award of compensatory damages, lost wages, other lost compensation, and full vesting of benefits or compensation for lost benefits which aggregate not less than \$1 million, punitive damages, and costs of this proceeding.

Respondents requested that the Panel dismiss the Statement of Claim in its entirety, with costs assessed against Claimant, and that they award Respondents such other relief as they deem just and proper.

### **OTHER ISSUES CONSIDERED AND 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.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
Injunctive relief fee	= \$ 2,500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Merrill Lynch, Pierce, Fenner & Smith Inc. is a party.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: October 18, 1999	1 session
Twenty-two (22) Hearing sessions x \$1,200.00	= \$26,400.00
Hearing Dates: February 1, 2000	1 session
March 29, 2000	2 sessions
March 30, 2000	2 sessions
April 18, 2000	2 sessions

April 19, 2000	1 session
May 2, 2000	2 sessions
June 26, 2000	2 sessions
June 27, 2000	2 sessions
July 18, 2000	2 sessions
July 19, 2000	2 sessions
August 23, 2000	2 sessions
August 24, 2000	2 sessions
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Total Forum Fees	= \$26,850.00

1. The Panel has assessed \$13,425.00 of the forum fees against Claimant.
2. The Panel has assessed \$13,425.00 of the forum fees against Merrill.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00
Injunctive Relief Fee	= \$ 2,500.00
<u>Forum Fees</u>	= \$13,425.00
Total Fees	= \$16,425.00
<u>Less payments</u>	= \$ 4,300.00
Balance Due NASD Dispute Resolution, Inc.	= \$12,125.00
2. Merrill be and hereby is solely liable for:

Member Fees	= \$ 7,600.00
<u>Forum Fees</u>	= \$13,425.00
Total Fees	= \$21,025.00
<u>Less payments</u>	= \$ 6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$14,925.00

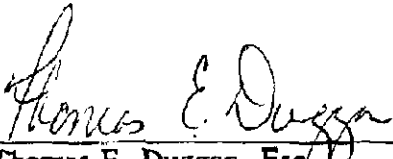
All balances are due and payable to NASD Dispute Resolution, Inc.

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**Concurring Arbitrators Signatures**

I, the undersigned arbitrator, 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 E. Duggan, Esq.  
Industry Arbitrator, Presiding Chair

9/13/00  
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Signature Date

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Earl S. Schwarz  
Industry Arbitrator

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Signature Date

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Harry T. Walters  
Industry Arbitrator

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Signature Date

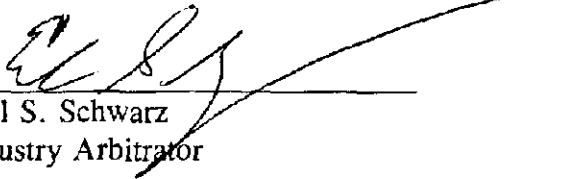
September 21, 2000  
Date of Service (For NASD office use only)

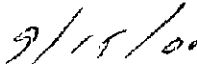
**Concurring Arbitrator's Signatures**

I, the undersigned arbitrator, 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.

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Industry Arbitrator, Presiding Chair

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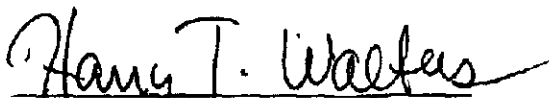
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September 21, 2000

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