

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

Hearing Site: Birmingham, Alabama

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (████████): Owen Harnett, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. ("Merrill Lynch"): Janell M. Ahnert, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: December 21, 2016.
Amended Statement of Claim filed on or about: January 18, 2017
████████ signed the Submission Agreement: December 21, 2016.

Statement of Answer filed by Merrill Lynch on or about: March 6, 2017
Merrill Lynch signed the Submission Agreement: February 10, 2017.

CASE SUMMARY

████████ asserted the following causes of action: defamation; tortious interference with prospective economic advantage; and wrongful termination. The causes of action relate to Merrill Lynch's termination of ██████████ employment and alleged defamation on ██████████ subsequent filing on her Form U5 as maintained by the Central Registration Department ("CRD").

Unless specifically admitted in the Statement of Answer, Merrill Lynch denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, [REDACTED] requested:

1. Expungement of the Form U5 from [REDACTED] CRD records on the basis that the statement is defamatory in nature or, alternatively, an amendment to [REDACTED] CRD record;
2. Compensatory damages of \$896,622.00;
3. Punitive damages of \$400,000.00;
4. Legal fees of \$8,500.00; and
5. Such other relief as the Arbitrator may deem just and proper.

In the Statement of Answer, Merrill Lynch requested:

1. Dismissal of [REDACTED] claims; and
2. Costs and fees for defending this frivolous action.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

On April 26, 2017, [REDACTED] dismissed any claims for damages in this matter and the parties filed a Stipulation Regarding Hearing of [REDACTED] Expungement Claim ("Stipulation"). The Stipulation provided that a final hearing relating to [REDACTED] request for Form U5 expungement will be held at the date and time when set by the Initial Prehearing Conference in Birmingham, Alabama. The parties agreed that this final hearing and all prehearing matters will proceed as follows:

- a) Pursuant to FINRA Code of Arbitration Procedure for Industry Disputes Rule 13600(a), [REDACTED] and Merrill Lynch waive the right to a full hearing.
- b) [REDACTED] request for expungement shall be limited to claim that the Termination Explanation is defamatory.
- c) The hearing will be conducted by a single arbitrator.
- d) The Chair will consider the evidence proffered and decide the issue described in section (b) as stated above. If the Chair determines the issue in section (b) favors [REDACTED], the Chair will order that the description of such conduct should be expunged or modified. Moreover, the Chair will determine if Merrill Lynch's answer [sic] 7(f)(1) on [REDACTED] Form U5 be changed from "yes" to "no" and that Merrill Lynch's further comments relating to its investigation be removed.
- e) The hearing will be limited to six (6) hours of witness testimony with the time equally divided among the parties. The parties may call no more than two (2) witnesses each. Moreover the parties will not present any testimony, evidence, or argument concerning any claim other than that relevant to the issues outlined in section (b).
- f) [REDACTED] will not present any evidence or argument that is not relevant to the issues outlined in section (b), including that Merrill Lynch's findings at the conclusion of its investigation were false.
- g) The parties further stipulate and agree that the Chair will not issue a reasoned decision or findings of fact to support her [sic] decision. To the extent the Chair finds that the Form U5 or Amended Form U5 is defamatory in nature, it will be

that the language is defamatory in nature and not that Merrill Lynch intentionally defamed [REDACTED].

- h) As is set forth herein, [REDACTED] waives any claim for damages and shall notify FINRA in writing in advance of the hearing that she has dismissed any claims for damages, costs or fees arising from the Claims in this matter. If for some reason the Chair should award damages, costs, or fees to [REDACTED] in spite of this notification, [REDACTED] agrees to forfeit and/or waive those damages, costs or fees pursuant to this Agreement and will not enforce or pursue payment of the same.
- i) Hearing session fees for the expungement hearing shall be shared equally by [REDACTED] and Merrill Lynch. However, [REDACTED] is responsible for all other costs and fees incurred in pursuit of expungement or modification of his [sic] Form U5.
- j) In the event that the Chair finds in favor of [REDACTED] and orders expungement or modification of his [sic] Form U5, Merrill Lynch agrees to take such action as specified in the order within forty-five (45) calendar days of its receipt of the Chair's award to process any updates to [REDACTED] Form U5 through FINRA's CRD system in accordance with the Chair's Order.
- k) [REDACTED] further agrees she will not file any other proceeding in court or any other forum to seek expungement of relief relating to the Form U5 issued on her behalf by Merrill Lynch.
- l) The parties agree that no appeal or motion to vacate will be pursued regarding the Arbitrator's award addressing the expungement claim.

The Arbitrator conducted an in-person hearing on October 24, 2017, so the parties could present oral argument and evidence on [REDACTED] request for Form U5 expungement.

AWARD

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

1. The Arbitrator recommends the expungement of the current Termination Explanation in section 3 of Claimant [REDACTED] (CRD# [REDACTED]) Form U5, filed by Respondent Merrill Lynch Pierce Fenner & Smith Inc. on September 12, 2016 and maintained by the CRD, based on the defamatory nature of the information. The current language shall be changed to read:

“Failure to comply with industry and firm standards in handling client documents and failure to adhere to firm standards regarding acting as a notary.”

This recommendation also applies to Section 4 of the Termination Disclosure Reporting Page on the foregoing Form U5. The Reason for Termination shall remain the same. The above recommendations shall apply to any subsequent disclosures concerning this event.

The Form U5 is not automatically amended to include the changes indicated above. Claimant [REDACTED] must forward a copy of this Award to FINRA's Registration and Disclosure Department for the review.

2. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$ 2,000.00
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**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Merrill Lynch is assessed the following:

Member Surcharge	= \$ 3,025.00
Member Process Fee	= \$ 6,175.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

August 22, 2017, postponement by parties	= \$ 450.00
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Total Postponement Fees	= \$ 450.00
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The Arbitrator has assessed \$225.00 of the postponement fees to [REDACTED]
The Arbitrator has assessed \$225.00 of the postponement fees to Merrill Lynch.

Hearing Session Fees and Assessments

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

One (1) pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: June 20, 2017	1 session

Two (2) hearing sessions @ \$450.00/session	= \$ 900.00
Hearing Date: October 24, 2017	2 sessions

Total Hearing Session Fees	= \$ 1,350.00
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The Arbitrator has assessed \$675.00 of the hearing session fees to [REDACTED]

The Arbitrator has assessed \$675.00 of the hearing session fees to Merrill Lynch.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATOR

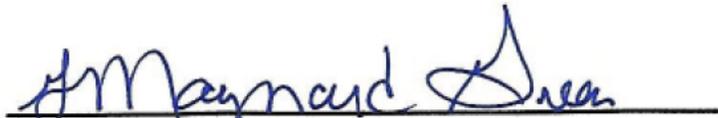
G. Maynard Green

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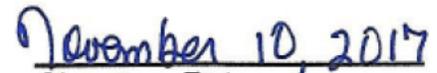
Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature



G. Maynard Green
Sole Public Arbitrator



Signature Date

November 14, 2017
Date of Service (For FINRA Office of Dispute Resolution office use only)