

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant

Michael T. Williams

Case Number: 20-03995

vs.

Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.

Brian M. Shambo

Thomas F. Nelson

Daniel I. Markow

Kyle W. Morgan

Hearing Site: Boca Raton, Florida

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Person vs. Member and Associated Persons

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Michael T. Williams: Nicholas D. Thomas, Esq., Vero Beach, Florida.

For Respondents Merrill Lynch Pierce Fenner & Smith, Inc. (“MLPFS”), Brian M. Shambo, Thomas F. Nelson, Daniel I. Markow, and Kyle W. Morgan: Rachael Carp, Esq., Rubin, Fortunato, & Harbison, P.C., Paoli, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on or about: December 8, 2020.

Michael T. Williams signed the Submission Agreement: December 8, 2020.

Statement of Answer and Counterclaim filed by Respondents on or about: February 1, 2021.

Merrill Lynch Pierce Fenner & Smith, Inc. signed the Submission Agreement: February 1, 2021.

Brian M. Shambo signed the Submission Agreement: January 25, 2021.

Thomas F. Nelson signed the Submission Agreement: January 29, 2021.

Daniel I. Markow signed the Submission Agreement: January 25, 2021.

Kyle W. Morgan signed the Submission Agreement: January 28, 2021.

Answer to Respondent MLPFS's Counterclaim filed by Claimant on or about: February 17, 2021.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract; common law fraud; negligence; and gross negligence. The causes of action relate to the financial package offered to Claimant for employment with Respondent.

Unless specifically admitted in the Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Respondent MLPFS asserted the causes of action of breach of contract and unjust enrichment. The causes of action relate to Claimant's alleged failure to repay sums due to Respondent MLPFS pursuant to a promissory note dated June 13, 2019 ("Promissory Note").

In the Answer to the Counterclaim, Claimant stipulated that he recognizes the debt owed pursuant to the Promissory Note and adopted the affirmative defenses set forth in Respondents' Answer.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: compensatory damages in the amount of \$3,035,000.00; punitive damages in the amount of \$1,000,000.00; interest at the statutory rate; costs; and attorneys' fees.

In the Statement of Answer, Respondents requested: that Claimant's Statement of Claim be denied in its entirety; costs; and for all other relief the Panel deemed reasonable and appropriate. In its Counterclaim, Respondent MLPFS requested: \$37,878.80 (the outstanding balance owed on the Promissory Note); interest in the additional amount of 2.4% per annum from June 19, 2020 through such date as the principal and interest are fully paid (accumulating at a rate of \$2.49 per day); attorneys' fees and costs; and any additional relief the Panel deemed just and appropriate.

In the Answer to the Counterclaim, Claimant requested that the Panel determine the issue of the Promissory Note.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

Prior to the end of Claimant's case in chief, the individual Respondents made an ore tenus motion to dismiss ("motion") this matter. The individual Respondents renewed their motion after Claimant rested his case, arguing that Claimant failed to adduce evidence to support any claim against any individual Respondent upon which relief could be granted. The Panel deferred consideration of the motion until the conclusion of the hearing. Although the Panel ultimately reached conclusions that showed the motion to be well-founded, the Panel opted to give Claimant every opportunity to prove his case and heard the entire case on the merits before deciding the claims were without merit.

The Award in this matter may be executed in counterpart copies.

### **AWARD**

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

1. Claimant's claims are denied in their entirety. Claimant failed to provide a cogent basis for any claim, and in particular as to the individual Respondents. While the evidence showed that Claimant's frustration with the course of events was sincere and reasonable, it also showed that Respondent MLPFS complied with its contract with Claimant and committed no tort.

The contract entered stated that Claimant relied on no representations not contained in that agreement. It provided that the employment would be at will. Multiple witnesses, including Claimant, testified that they understood Claimant could terminate the employment at any time, and while Claimant did not state an understanding of the agreement as creating an employment that was terminable at will by Respondent MLPFS, the contract unambiguously provided exactly that.

The evidence did not establish, as sometimes asserted by Respondents, that Respondent MLPFS could not have promoted Claimant to Resident Director. It did, however, establish that it had a right to decide not to do so.

While not required to dispose of Claimant's claims, the evidence also revealed both a reasonable basis for choosing not to promote Claimant, and efforts by Respondent MLPFS to find a resolution to the reporting on Claimant's U5 that caused Respondent MLPFS to choose not to promote Claimant.

Claimant, not Respondents, terminated Claimant's employment as a financial advisor, as he was entitled to do for any reason or no reason. While there was some evidence of some errors in services related to moving Claimant's book of business to Respondent MLPFS and in other services, none of these were material breaches of the contract.

Further, there was no evidence from which the Panel would have been able to determine any damages with reasonable certainty, if there had been, in fact, any damages. Respondent MLPFS paid Claimant as agreed. Most of his book of business was, in fact, successfully transferred. He received the funds for which he executed a promissory note and failed to fully repay it as agreed.

Notably absent was any substantial evidence to support an inference that any Respondent intentionally misled Claimant. Rather, the evidence all supported the inference that Respondent MLPFS intended to promote Claimant when it hired him as a financial advisor, and later decided not to when additional, relevant facts came to light.

It should be noted that this Award in no way represents any finding or conclusion by this Panel that the subject U5 entry was valid or accurate or appropriate. The prior employer was



Pre-Hearing Conferences: April 5, 2021	1 session	
Five (5) hearing sessions @ \$1,400.00/session		= \$ 7,000.00
Hearings: September 22, 2021	2 sessions	
September 23, 2021	2 sessions	
September 24, 2021	1 session	
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Total Hearing Session Fees		= \$ 8,850.00

The Panel has assessed \$7,925.00 of the hearing session fees to Claimant.

The Panel has assessed \$925.00 of the hearing session fees jointly and severally to Respondents.

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

**ARBITRATION PANEL**

Will Murphy	-	Public Arbitrator, Presiding Chairperson
Magda M. Fernandez Torres	-	Public Arbitrator
Lawrence Alan Saichek	-	Non-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.

**Concurring Arbitrators' Signatures**

***Will Murphy***

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Will Murphy  
Public Arbitrator, Presiding Chairperson

**10/26/2021**

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Signature Date

***Magda M. Fernandez Torres***

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Magda M. Fernandez Torres  
Public Arbitrator

**10/26/2021**

\_\_\_\_\_  
Signature Date

***Lawrence Alan Saichek***

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Lawrence Alan Saichek  
Non-Public Arbitrator

**10/26/2021**

\_\_\_\_\_  
Signature Date

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October 27, 2021

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Date of Service (For FINRA Dispute Resolution Services use only)