

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 30 January 2004

CASE NO.: 2003-SOX-23

IN THE MATTER OF:

ROBERT J. MCINTYRE, PRO SE
Complainant

v.

**MERRILL LYNCH, PIERCE,
FENNER & SMITH, INC. and
MERRILL LYNCH & COMPANY**
Respondents

ORDER CORRECTING RECOMMENDED DECISION AND ORDER

The final paragraph of the Decision should read as follows:

In essence, after examining the entire record, I find that: (1) Complainant did not engage in protected activity by his actions in protesting Edgecomb's unauthorized sale of customer Kanewske's Cyprus bond, all of which occurred prior to enactment of Sarbanes Oxley; (2) Respondent terminated Complainant on July 11, 2000, because of poor production, and not in retaliation for protesting Edgecomb's sale of the Cyprus bond; (3) in terminating Complainant, Respondent treated Complainant like other employee brokers; (4) Respondent did not blacklist Complainant when it indicated on NASD forms termination *for* unsatisfactory probation; (5) Respondent did *not* discriminate against Complainant regarding its FCAP, MET Life annuity, or investment certificate awards; (6) Respondent did not discriminate against Complainant by withholding during the NASD arbitration proceedings Complainant's medical report of sleep apnea; (7) Respondent did not pay or bribe Susan Moss for favorable testimony at Complainant's arbitration

proceeding; (8) Respondent has not blacklisted or prevented Complainant's employment with subsequent employers, ***nor*** has it improperly refused to unilaterally change Complainant's U-4 or U-5 forms held by NASD.

A

CLEMENT J. KENNINGTON
ADMINISTRATIVE LAW JUDGE