

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
PALACIO & WEINRAUB, INC.,)
Claimant,)
vs.) Case #87-02550
Award
MERRILL LYNCH, PIERCE, FENNER & SMITH.)
INC.,)
Respondent.)

Heard before the members of the Arbitration Panel:

William A. Fleck, Esq.
Patricia A. Shub
Anthony S. Paetro, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on December 10, 1987. The hearing was conducted in Fort Lauderdale, Florida with a total of two sessions.

Claimant, Palacio & Weinraub, Inc. ("P&W"), alleged that Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"), was liable for breach of contract, negligence, conversion, breach of fiduciary duty and account stated. Specifically, P&W alleged that it had opened an account whose funds were posted as security under an indemnification agreement that was required in connection with a performance bond; that those funds were improperly paid out; that P&W has demanded payment of costs incurred in determining the status of those funds; and, that Merrill has refused to make such payment. Respondent stated that the Statement of Claim fails to state a claim for relief and that Claimant has suffered no damages.

RELIEF REQUESTED

Claimant requested damages of \$72,000.00 plus interest, attorney's fees and other costs. Respondent requested dismissal of claim.

AWARD

On June 28, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on December 4, 1987, and by Respondent on March 17, 1988. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. The parties have agreed that the Award in this matter may be entered 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 originals remain on file with the NASD, Inc.
2. Respondent, Merrill, shall not be and hereby is not liable to the Claimant and, therefore, all claims against it shall be and hereby are dismissed.

3. Pursuant to Section 43 of the Code of Arbitration Procedure, Claimant, P&W, shall be and hereby is assessed forum fees in the amount of One Thousand and 00/100 (\$1,000.00) Dollars. The National Association of Securities Dealers, Inc. shall retain the Five Hundred and 00/100 (\$500.00) Dollar filing fee previously deposited by the Claimant as partial payment for such forum fees.
4. Claimant's request for attorney's fees shall be and hereby is dismissed in all respects.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

William A. Fleck, Esq., Patricia A. Shub and Anthony S. Paetro, Esq.

Dated: July 11, 1989