

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

---

IN THE MATTER OF THE ARBITRATION BETWEEN

SEBASTIAN C. SISTI

CLAIMANT

AWARD  
89-01331

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.

RESPONDENT

---

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 4, 1989, Claimant Sebastian C. Sisti ("Sisti") alleged there was an illegal charge of interest on short sales against the box which had a rippling effect throughout his account in regard to the 1,000 trails and that the Respondent engaged in fraudulent activity in his margin account and his SMA account. Claimant further alleged that two employees of the Respondent breached the fiduciary duty owed to the Claimant. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") maintained the applicability of the Respondent's margin maintenance and commission rules to Claimant's account was in accordance with all applicable rules and regulations, was made in the ordinary course of Respondent's business, was in accordance with Respondent's margin rules as applied to all of its public customers and ought to have been known to and expected by the Claimant, a sophisticated, knowledgeable, experienced investor and trader and the Claimant is wrong on the law and misreads Regulation T and the other statutes, rules, regulations and interpretations he cites. The Respondent Merrill Lynch further maintained the Claimant made his own investment decisions, followed the various trade journals and news reports of the securities industry and employed his own systems and strategies of investing and the Respondent or its employees never breached the fiduciary duty owed to the Claimant.

RELIEF REQUESTED

Claimant requested damages of \$600,296.00 inclusive of interest plus punitive damages of \$250,000.00. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested dismissal of claim in its entirety and that the Claimant bear the cost of the proceeding and that Respondent be awarded costs including reasonable counsel fees in an amount of at least \$10,000.00.

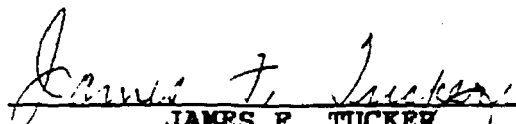
AWARD

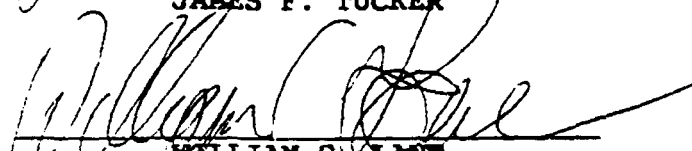
On October 25 & 26, 1990 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Sebastian C. Sisti on May 2, 1989 and by Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. on August 7, 1989. The hearing was conducted in Richmond, VA and consisted of five (5) hearing sessions including a pre-hearing conference conducted on September 6, 1990. The arbitration panel, having considered the pleadings, the testimony, and evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. The claims by the Claimant Sebastian C. Sisti be and hereby are dismissed in all respects.
2. The parties shall each bear their respective costs including attorney's fees.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$1000.00 filing fee previously deposited by the Claimant. In addition, the Claimant Sebastian C. Sisti be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of Two Thousand Dollars and No Cents (\$2,000.00) to represent forum fees and the Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of Two Thousand Dollars and No Cents (\$2,000.00) to represent forum fees.

CONCURRING ARBITRATORS

  
MARK E. RUBIN

  
JAMES F. TUCKER

  
WILLIAM C. LANE

DATED: November 27, 1990