

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Myra Scher)

Case No.89-02874

Name of Respondent(s))

Merrill Lynch, Pierce Fenner & Smith Inc)
Robert A. Feigenbaum)

Heard before the the Arbitrator:

Arieh Leo Douar

CASE SUMMARY

This claim was filed with the NASD, Inc. on October 17, 1989. The hearing was conducted in Fort Lauderdale, Florida on August 14, 1990, with a total of two sessions.

Claimant, Myra Scher ("Scher"), alleged that Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), and Robert Feigenbaum ("Feigenbaum"), breached their customer agreement with Scher by cashing checks drawn on the account by her ex-husband after Scher revoked the power of attorney and that Respondents' conduct was negligent.

Respondents denied all allegations of wrongdoing; admitted that the power of attorney was revoked prior to the dates the checks were drawn; alleged that Claimant should have notified them of the theft of the checks; that Claimant should have blocked the account; alleged the affirmative defenses of acting in a commercially reasonable manner, failure to mitigate damages, claim should be against former husband and this matter resolved in the divorce proceeding.

RELIEF REQUESTED

Claimant requested damages in the amount of \$10,000.00; interest from August 2, 1988 to date; costs; interest as a result of the debit and other relief. Respondents requested dismissal and costs.

AWARD


On August 14, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on October 13, 1989, and by Respondent Feigenbaum on November 27, 1989, and by MLPFS on December 7, 1989. The arbitrator, 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. Respondent, Feigenbaum, is found not liable to the Claimant and, therefore, all claims against him are hereby dismissed.
2. Respondent, MLPFS, is found liable and shall pay to Claimant the amount of Ten Thousand and 00/100 (\$10,000.00) Dollars plus interest from December 8, 1988, to the date of the Award in the amount of Two Thousand One Hundred and 00/100 (\$2,100.00) Dollars for a total due to the Claimant in the amount of Twelve Thousand One Hundred and 00/100 (\$12,100.00) Dollars.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, Respondent, MLPFS, is hereby assessed forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars (2 sessions x 200.00) of which Two Hundred and 00/100 (\$200.00) Dollars shall be paid directly to Claimant and Two Hundred and 00/100 (\$200.00) Dollars shall be paid to The National Association of Security Dealers, Inc. The NASD shall retain The Two Hundred and 00/100 (\$200.00) Dollar filing fee previously deposited by the Claimant.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceedings including attorneys' fees.

OTHER ISSUES

None.

ARBITRATOR CONCURRING


Arieh Leo Douer

Received this 22nd day of August 1990.