

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between

Sebastian S. Sisti

Claimant

vs.

Case #90-01427
Award

Merrill Lynch Pierce Fenner & Smith, Inc.

Respondent

Heard Before:

Edmund S. Twining, Jr.

Public Arbitrator

Thomas Adamson, IV

Industry Arbitrator

Angela Desmond

Public Arbitrator

REPRESENTATION

Claimant, Sebastian S. Sisti ("Sisti"), represented himself. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS"), was represented by Arthur H. Sobel, Esq. of MLPFS.

CASE SUMMARY

Claimant, Sisti, alleged that Respondents continually borrowed his Texas Air Corporation shares for the purpose of lending them to short sellers of the stock which may have included short sales for its own proprietary account. Claimant further averred that by failing to notify him in the margin agreement that the borrowed stock would be lent to short sellers at a profit and that it would pre-empt 100% of the profit, MLPFS deceived Claimant in order to defraud him of the profit. Finally, Claimant alleged MLPFS deceived its own customers in the "cross-borrowing, cross-lending" scheme establishing a pattern of racketeering.

Respondent maintained that the hypothecation agreement (a part of the margin agreement) is clear. MLPFS asserted that through this agreement it is entitled to borrow the stock from Claimant, under certain conditions, at the risk of Respondent. MLPFS denied it deceived or defrauded Claimant.

RELIEF REQUESTED

Claimant, Sisti, requested actual damages in the amount of \$200,361.00 under the treble penalty provisions of the RICO

statute, and punitive damages in the amount of \$300,000.00.

Respondent, MLPFS, requested that Claimant's claim be dismissed, costs and attorneys' fees in an amount of at least \$10,000.00.

AWARD

On April 30, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant, Sisti, on May 15, 1990 and by the Respondent, MLPFS, on July 10, 1990. The hearing was held in Richmond, VA and consisted of 2 sessions. 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- Respondent, MLPFS, moved for dismissal of the claim after Claimant's case-in-chief. The motion was taken under advisement;
- 2- The claim of the Claimant, Sisti, was dismissed in its entirety;
- 3- The parties shall each bear their respective costs, including attorneys' fees;
- 4- Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimant;
- 5- Respondent, MLPFS, is assessed forum fees in the amount of \$950.00 payable to the NASD, Inc. in accordance with Section 43 of the Code of Arbitration Procedure.

ARBITRATOR SIGNATURES

_____/s/_____
Edmund S. Twining, Jr.

_____/s/_____
Thomas Adamson, IV

_____/s/_____
Angela Desmond

May 8, 1991