

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

NELL GRUBB

Claimant

No. 90-02639

and

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.

Respondents

REPRESENTATION OF PARTIES

Nell Grubb was represented by Lawrence L. Mealer, Esq., Dallas, Texas.

Merrill Lynch, Pierce, Fenner & Smith, Inc. was represented by Donald L. Littlefield, Esq. of Geary, Stahl & Spencer, Dallas, Texas.

CASE SUMMARY

In a statement of claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about September 20, 1990, Nell Grubb ("Claimant") alleged that Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") and its employees were negligent in not safeguarding the funds deposited in the Claimant's account or acting in a reasonable manner under the circumstances. Claimant specifically alleged that Respondent was negligent in allowing another individual to open an account with a similar number to Claimant, failed to contact Claimant when confronted with deposits of the Claimant's money without contacting the Claimant in regard to the transaction or to deposit funds clearly intended for one account into another account.

In its Statement of Answer filed with the NASD on or about January 3, 1991, Respondent denied the allegations of Claimant. Respondent stated that it followed the express instructions of Claimant and that no unauthorized withdrawals occurred from Claimant's account. Respondent also stated that it made deposits into Claimant's account as Claimant directed.

RELIEF REQUESTED

Claimant requested an award in the amount of \$56,320.15, interest and attorneys's fees.

Respondent requested that the claim be dismissed and that it be awarded its costs and reasonable attorney's fees.

PROCEDURAL MATTERS

On Thursday, July 11, 1991 in Dallas, Texas during a hearing lasting a total of one (1) session, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on September 18, 1990 by Claimant Nell Grubb on December 31, 1990 by Michael J. Stewart on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive typed conformed copies of the award while the original remains on file with the NASD.

AWARD

The arbitrator, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim shall be and hereby is dismissed and denied in its entirety;
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter; and
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall pay to the NASD the sum of \$500.00 as forum fees.

Dated:

July 11, 1991

S/S Lisa R. Browning, Esq.
Presiding Chair
Public Arbitrator

July 11, 1991

S/S William L. Cravens
Public Arbitrator

July 11, 1991

S/S Robert A. Roberts
Industry Arbitrator

Served by NASD: July 23, 1991