

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration BetweenName of Claimant(s)

Merrill Lynch Pierce Fenner &amp; Smith Inc

90-03240

Name of Respondent(s)Silvio J. DiMedio  
Sandra KernREPRESENTATION

For Claimant: Robert T. Cohen, Esq.

For Respondent, Silvio J. DiMedio: Donald E. Wydrzynski, Esq.

Third-Party Respondent, Sandra Kern was Pro Se.

CASE INFORMATION

Statement of Claim filed: 11/16/90

Claimant's Submission Agreement signed on: 11/6/90

Respondent, Silvio J. DiMedio's Submission Agreement was signed on: 1/17/91

HEARING INFORMATION

Hearing Date: May 23, 1991 - One (1) Session

Hearing Location: Philadelphia, PA

CASE SUMMARY

Claimant, Merrill Lynch, Pierce, Fenner & Smith, Inc., alleged that Respondent, Silvio J. DiMedio, issued a check in payment of an option order requested by him in which Claimant was to act as his broker at a time when there were insufficient funds in his account to pay the check and that Respondent has failed to make good the check despite a demand to do so.

AWARD-#90-03240

Respondent, Silvio J. Dimedio, maintained that he notified the Claimant that there would be insufficient funds shortly after the order was confirmed and that Claimant should liquidate the order and that Claimant ignored the order to sell which violated a duty to mitigate and which, if acted on promptly, would have resulted in a gain instead of a loss. Respondent, furthermore, asserted a Counterclaim against Claimant and a Third-Party claim against, Third Party Respondent, Sandra Kern who was the broker with whom Respondent dealt throughout the transaction at issue.

**RELIEF REQUESTED**

Claimant requested an award in the amount of \$14,702.59 including interest.

Respondent and Third-Party Claimant, Silvio J. Dimedio, requested dismissal of the claim and relief on his Counterclaim and Third-Party Claim in the amount of \$3,400.00.

Third-Party Respondent, Sandra Kern requested Dismissal of the Third-Party Claim.

**AWARD**

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

(The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD).

1. Respondent, Silvio J. Dimedio, shall pay to Claimant, Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of Fourteen Thousand Seven Hundred Two Dollars and Fifty Nine Cents (\$14,702.59);
2. Respondent's Counterclaim and Third-Party Claim against Claimant, Merrill Lynch, Pierce, Fenner & Smith Inc. and Sandra Kern, Shall be and are hereby dismissed in all respects;
3. The Parties shall each bear their respective costs, including attorneys' fees;
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$800.00 filing fee previously deposited by the Claimant.

~~AWARD~~ 490-03240

ARBITRATOR

Name

Public/Industry

Joseph L. Farrell, Jr., Esq.

Public/Chairman

Concurring Arbitrator's Signature

/s/

Joseph L. Farrell, Jr., Esq.

Date of Decision: June 20, 1991

DATED BY NASD  
JUNE 28, 1991