

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ronald W. Godfrey,
individually and as Trustee of
the Ronald W. Godfrey Trust

91-00985

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith Inc.,
Oppenheimer & Co., Inc., and
William J. Murphy

REPRESENTATION

For Claimant: Paul Harvey, Esq. of Bell & McGurk, Ltd., Chicago, Illinois.

Respondent William J. Murphy appeared pro se for the hearing held on October 5, 1992. Respondent William J. Murphy had been represented by Bernard Davis, Esq. for the hearings held on August 26 and 27, 1992.

CASE INFORMATION

Statement of Claim filed: March 26, 1991.

Claimant's Submission Agreement signed on: May 2, 1991.

Statement of Answer filed by Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. on: September 5, 1991.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. Submission Agreement signed on: September 4, 1991.

Joint Statement of Answer filed by Respondent Oppenheimer & Co., Inc. and William J. Murphy on: September 4, 1991.

Respondent Oppenheimer & Co., Inc.'s Submission Agreement signed on: September 4, 1991.

Respondent William J. Murphy's Submission Agreement signed on:

Amended Statement of Claim filed: July 15, 1991.

Answer of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. to the Amended Statement of Claim filed: July 27, 1992.

Claimant's Settlement letter filed August 19, 1992 releasing Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Oppenheimer & Co., Inc. from this arbitration.

HEARING INFORMATION

On August 26 and 27, 1992, and October 5, 1992, in Chicago, Illinois, in hearings lasting a total of one (1) session each day, the Arbitration proceeded solely against Respondent William J. Murphy as to counts VIII and IX of the Amended Statement of Claim.

CASE SUMMARY

Claimant, Ronald W. Godfrey, individually and as Trustee of the Ronald W. Godfrey Trust ("Claimant"), alleged breach of contract and violation of Ill. Rev. Stat. Ch. 38, Sect. 17-1a by Respondent William J. Murphy ("Murphy"). The allegations arose out of loans claimant allegedly made to Murphy between February 7, 1987 through December 18, 1987. Claimant alleged that the loan has not been repaid. Claimant further alleged that Murphy issued a \$2,500.00 check to claimant on June 3, 1990, which was allegedly presented and returned unpaid. Claimant went on to allege that on August 1, 1990, the check had been presented a second time and was dishonored.

Respondent Murphy has not filed an answer to the Amended Statement of Claim.

RELIEF REQUESTED

As to Count VIII of the Amended Statement of Claim, Claimant requested that an award be entered against Murphy in the amount of \$146,500.00, plus interest at 9% per year from December 18, 1987.

As to Count IX of the Amended Statement of Claim, Claimant requested an award be entered against Murphy for \$2,500.00, plus statutory damages of \$500.00, and attorney's fee and costs of \$270.00.

OTHER ISSUES CONSIDERED & DECIDED

Respondent William J. Murphy did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing, and is bound by the determination of the arbitration panel on all issues submitted.

On August 19, 1992, by notification to the NASD of settlement, Claimant dismissed the case as against Merrill Lynch, Pierce, Fenner & Smith, and Oppenheimer & Co., Inc. from this arbitration.

On August 26, 1992, Respondent Murphy made a Motion to Postpone the hearing due to the fact that he had just retained counsel to represent him as to counts VIII and IX of the Amended Statement of Claim. After hearing argument from all parties present at the hearing, and deliberation, the panel ordered the hearing postponed until 12:30 p.m., August 27, 1992.

On August 27, 1992, Respondent Murphy again made a Motion to Postpone due to settlement negotiations relating to counts VIII and IX of the Amended Statement of Claim. Claimant stated no position either for or against the Motion. After hearing argument, and deliberation, the arbitrators granted the Motion, and rescheduled the hearing to October 5, 1992.

On October 5, 1992, the industry arbitrator could not be located for the hearing. Further, the chairman had informed the NASD that he would be unable to attend the hearing until 12:00 noon. Based on these facts, and also based on the willingness of the Honorable Saul A. Epton to proceed as the sole arbitrator, the parties agreed, for the record, to proceed with one arbitrator.

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

AWARD

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

1. Respondent William J. Murphy is liable for, and shall pay to Claimant, Ronald W. Godfrey, Individually and as Trustee of the Ronald W. Godfrey Trust, the sum of \$214,541.00 as satisfaction for his claims herein.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

3 hearing sessions X \$750 = \$2,250.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$1,500.00 are assessed against Claimant.

Pursuant to Sections 43(c) and 30(b) of the Code of Arbitration Procedure, the NASD shall retain the postponement fee in the amount of \$750.00 previously paid to the NASD by the Claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

Name

Date

Saul A. Epton /s/
Hon. Saul A. Epton
Presiding Chair
Public Arbitrator

October 8, 1992

NASD Award served on:

Oct 13, 1992