

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between ;

Wolfgang Schivelbush ;

Claimant ;

vs. ;

Merrill Lynch, Pierce, Fenner &
Smith, Inc. ;

Respondent ;

CASE #91-01519
AWARD

CASE SUMMARY

Wolfgang Schivelbush, Pro Se, in a claim filed with the National Association of Securities Dealers, Inc. on May 16, 1991, alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. failed to correct fraudulent charges made on his Visa Card as connected with his Merrill Lynch, Pierce, Fenner & Smith, Inc. Cash Management Account, in spite of proper and timely notification. the charges in question were airline tickets purchased on U.S. Air and on Air France.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. by its attorney Christopher D. Cairioti, New York, New York, maintained that Claimant needed to do more than a preliminary letter of inquiry and subsequently was not timely in filing a more detailed explanation. They state that once 120 day challenge period has expired, Respondent could only attempt to reverse the charge by a "good faith" request to the merchant. Although the U.S. Air credit was made, Air France refused, saying the tickets had been used.

RELIEF REQUESTED

Claimant requests Eight Hundred Twelve Dollars and No Cents (\$812.00) in damages plus interest.

Respondent requests denial of the claim and the costs of this proceeding.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, George R. Freund, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 13, 1991 and by the Respondent on July 12, 1991.

And, that the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to the Claimant Wolfgang Schivelbush the sum of Eight Hundred Twelve Dollars and No Cents (\$812.00) plus interest at ten percent (10%) from August 1989 to August 1991 for a total amount of an award of Nine Hundred Seventy-Seven Dollars and No Cents (\$977.00)
2. The parties shall bear their respective costs.
3. The Thirty Dollars and No Cents (\$30.00) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. The Thirty Dollars and No Cents (\$30.00) filing fee is assessed against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. who shall pay Thirty Dollars and No Cents (\$30.00) directly to the Claimant as reimbursement.

AFFIRMATION

I, George R. Freund, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



George R. Freund

DATED: November 4, 1991