

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimant

Merrill Lynch Pierce Fenner & Smith Inc.

91-01555

Name of Respondent

Joseph McCabe

REPRESENTATION

For Claimant: Peter A. Lesser, Esq. of the firm of Jon L. Sirlin & Associates, P.C. represented Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("Claimant").

For Respondent: Mr. Joseph McCabe ("Respondent") did not attend the hearing.

CASE INFORMATION

Statement of Claim filed: May 15, 1991.

Claimant's Submission Agreement signed on: May 8, 1991.

Statement of Answer filed on: never submitted.

Respondent's Submission Agreement signed on: never submitted.

HEARING INFORMATION

Hearing Date/Sessions: November 21, 1991, one session.

Hearing Location: NASD, Inc., Philadelphia, PA.

CASE SUMMARY

Claimant alleged that on May 31, 1989, Respondent delivered to Claimant 844 shares of Zayre Corp. common stock. Claimant alleged on June 1, 1989 Respondent directed Claimant to sell 844 shares of Zayre Corp. and to deposit the proceeds in his account. Claimant alleged that Zayre Corp. issued a stock dividend to all common stock shareholders who held the stock on the "ex dividend" date of June 15, 1989. Claimant alleged, that although Respondent was not entitled to the stock dividend, Respondent received 433 shares of Waban, Inc. and Respondent was erroneously credited with case

dividends in the amount of \$1991.61. Claimant alleged that Respondent liquidated that stock and withdrew all proceeds from the sale of Zayre Corp., Waban, Inc. and the cash dividend from his account. Claimant alleged that, upon discovery of the error, Claimant called Respondent and wrote Respondent advising him of the above and then demanded the return of the wrongfully withheld stock and cash dividend. Claimant alleged that Respondent wrongfully and fraudulently converted the stock to cash. Respondent did not submit an Answer.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$9813.43, costs, interest and reasonable attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

That the arbitrator has determined that jurisdiction over the Respondent exists and copies of the letters sent by certified mail and the certified receipt cards are attached to this award.

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:

1. That Respondent is liable to the Claimant and shall pay to the Claimant the sum of Nine Thousand Eight Hundred Thirteen and 43/100 Dollars (\$9,813.43); interest is assessed on this amount from the date of June 22, 1989 until the date the award is paid at a rate of nine percent simple interest per annum.
2. That each party shall bear their costs, including attorneys' fees.

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FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD, Inc. shall retain Claimant's hearing session deposit as costs for the single session arbitration conducted on November 21, 1991.

Arbitrator's Signature

Name

Public/Industry

_____/s/_____
D. Joan Sampieri
Chairperson

Public

Date of Decision: November 21, 1991