

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

 In the Matter of the Arbitration Between :
 :
 Merrill Lynch, Pierce, Fenner & Smith, Inc. :
 :
 Claimant :
 :
 vs. :
 :
 Giovanni and Maria Vaselli :
 :
 Respondent :

CASE #91-02930
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 20, 1991, Claimant, Merrill Lynch, Pierce, Fenner & Smith, Inc., by and through their outside counsel, Kathy D. Patrick, Esq. of Gibbs & Ratcliff, Houston, Texas, alleged that on November 2, 1990 Respondents Giovanni and Maria Vaselli opened an account that consisted of three sub-accounts: a checking account; a CMA Fund and a securities account; which Respondents owned jointly. Claimant further alleged that on January 28, 1991, Respondents made an \$11,000.00 deposit through a third-party check issued by a Mr. Ed Smith that was deposited into Respondent's checking account. Claimant contended that on February 5, 1991, the \$11,000.00 deposit was returned unpaid, creating a debit balance in Respondents checking account. Claimant further contended that after all credits and payments have been made, a debit balance of \$8,003.01 remains unpaid. Claimant asserted that Respondents have failed and refused to pay the debit balance, although duly demanded.

Respondents, Giovanni and Maria Vaselli failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant, Merrill Lynch, Pierce, Fenner & Smith, Inc. requested \$8,003.01 in actual damages plus pre and post-judgement interest allowed by law and reasonable attorney's fees.

Respondents, Giovanni and Maria Vaselli failed to file an Answer to the Statement of Claim.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Leon Munson, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 14, 1991 and not by the Respondents, Giovanni and Maria Vaselli as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondents, Giovanni and Maria Vaselli were served a copy of the Statement of Claim by regular mail on October 29, 1991 and given an opportunity to respond, which they failed to do. Respondents, Giovanni and Maria Vaselli were notified on December 3, 1991, via certified mail, that their Statement of Answer was overdue. The signed certified mail receipt was returned date stamped December 9, 1991, evidencing their receipt of this correspondence. Respondents, Giovanni and Maria Vaselli were notified on December 13, 1991, via certified mail, of the selected arbitrator, pursuant to Section 22 of the NASD Code of Arbitration Procedure. Respondents failed to file an Answer to the Statement of Claim.
2. Pursuant to the By-Laws of the NASD the arbitrator determined that Respondents, Giovanni and Maria Vaselli were required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.


And, 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. Respondents, Giovanni and Maria Vaselli are jointly and severally liable and shall pay to the Claimant, Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$8003.01 in damages.
2. Respondents, Giovanni and Maria Vaselli are jointly and severally liable and shall pay to the Claimant simple interest at the rate of 5% per annum from February 1, 1991 to March 1, 1992.

3. Respondents, Giovanni and Maria Vaselli are jointly and severally liable and shall pay to the Claimant, the sum of \$630.00 in attorney's fees pursuant to the Cash Management Account Agreement and Chapter 38 of the Texas Civil Practice and Remedies Code.
4. The parties shall bear their respective costs.
5. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Merrill Lynch, Pierce, Fenner & Smith, Inc. shall be retained by the NASD, Inc. Respondents, Giovanni and Maria Vaselli are jointly and severally liable and shall pay to the Claimant the sum of \$575.00 as reimbursement.

AFFIRMATION

I, LEON MUNSON, 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.



Signature of Arbitrator

DATE OF DECISION: April 20, 1992