

N.A.S.D. ATARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Nick Belcher

91-03103

Name of Respondent

Merrill Lynch, Pierce Fenner & Smith, Inc.,
Rick Brennes

REPRESENTATION

For Claimant: Gregory G. Maier, Esq. of Richardson & Maier, Tulsa, Oklahoma.

For Respondent Merrill Lynch, Pierce Fenner & Smith, Inc.: Dennis M. Pape, Esq. of Merrill Lynch, Pierce Fenner & Smith, Inc., New York, New York. For Respondent Rick Brennes: Todd M. Nielsen, Esq., Carrollton, Texas.

CASE INFORMATION

Statement of Claim filed: October 4, 1991.

Claimant's Submission Agreement signed on: September 26, 1991.

Statement of Answer filed by Respondent, Merrill Lynch, Pierce Fenner & Smith, Inc. on: March 2, 1992. Statement of Answer filed by Respondent, Rick Brennes on: March 17, 1992.

Respondent Merrill Lynch, Pierce Fenner & Smith, Inc.'s Submission Agreement signed on: February 27, 1992. Respondent Rick Brennes's Submission Agreement signed on: August 20, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: August 25, 1992 for two (2) sessions.

Hearing Location: Oklahoma City, Oklahoma.

CASE SUMMARY

Claimant Nick Belcher ("Belcher") alleged that Respondent Rick Brennes ("Brennes") while employed with Respondent Merrill Lynch, Pierce Fenner &

Smith, Inc. ("Merrill Lynch") promoted Discovery Systems, Ltd. stock. long with Allen Campbell, President of Discovery Systems, Ltd. and Bill Rice from Prudential-Bache. Belcher alleged that he purchased ten thousand shares of Discovery Systems, Ltd. stock on April 12, 1989, and the check was made out to Capital Shares at the request of Brennes. Belcher alleged that he purchased another ten thousand shares on April 18, 1989, and on April 13, 1989 and that the stock was going up because he was the only one buying it. Belcher alleged he also bought shares of Discovery Systems, Ltd. on May 9, 1989 at a discount from SC Investments, which later was determined that SC was Selma Campbell, Allen Campbell's wife. Belcher alleged that Brennes said he had opened an account for Belcher at Merrill Lynch, but did not receive the 65,000 shares stock certificates until the end of the summer of 1990. Belcher alleged that the monoclonal antibodies which Discovery Systems made, did not exist, they were fictitious.

Respondent Merrill Lynch denied each and every allegation of wrongdoing and liability. Merrill Lynch alleged that each and every purchase of Discovery Systems, Ltd. stock set forth in the claim took place either through another brokerage house or with a private individual and before Belcher opened any account with Merrill Lynch.

Respondent Brennes denied each and every allegation of wrongdoing and/or liability. Brennes alleged that he never made any misrepresentation, misleading characterization, or attempt to manipulate the price or purchase of any stock, and particularly denied having committed any improprieties as to information provided regarding Discovery Systems or the handling of any shares certificates.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$73,164.00 for the purchase of stock in Discovery Systems, Ltd., plus attorney's fees in the amount of \$3,500.00.

Respondent Merrill Lynch, Pierce Fenner & Smith, Inc. requested that the arbitrators dismiss in full the claim of Nick Belcher and assess all costs against him. Respondent Rick Brennes requested that the Claimant have and recover nothing of Rick Brennes, that Rick Brennes have and recover of Claimant, including Rick Brennes' reasonable attorney's fees, and costs of defending the allegations wrongfully leveled against him, and awarding Rick Brennes such other and further relief to which he may show himself justly entitled.

OTHER ISSUES CONSIDERED & DECIDED

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. The Claimant's Statement of Claim against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is denied;
2. The Respondent, Rick Brennes, shall be and hereby is liable for and shall pay to the Claimant, Nick Belcher, actual damages in the amount of Ten Thousand Dollars (\$10,000.00); and
3. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees, other than those specifically enumerated for herein.

FORUM FEES

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

2 sessions X \$500.00 = \$1,000.00 minus hearing session deposit of \$500.00 = net \$500.00 due.

Forum fees Assessed Against: Respondent, Rick Brennes, in the amount of \$500.00. Respondent, Rick Brennes, shall also reimburse to the Claimant, Nick Belcher, the amount of \$500.00 which was previously deposited with the NASD by the Claimant.

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

By The Arbitration Panel:

Dated:

Kelley L. Cornelius, Esq., Chairperson s/s August 25, 1992
Public Arbitrator

Thomas A. Bamberger, Esq. s/s August 25, 1992
Public Arbitrator

Doren E. Bradberry, Jr. s/s August 25, 1992
Industry Arbitrator

Date Award Served by the NASD: s/s August 28, 1992