

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Merrill Lynch Pierce Fenner & Smith Inc

91-03672

Name of Respondents

John J. Irwin and Debra L. Irwin

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. in January 28, 1992 Claimant Merrill Lynch, Pierce Fenner & Smith, Inc. by and through their counsel Kathy D. Gibbs of Gibbs & Ratliff, Houston, Texas alleged that in July, 1991 Respondents John J. and Debra L. Irwin opened an account by signing the Account Documents and depositing 51 shares of Walmart Stores Common Stock, at which time, Respondents began debiting the account through various transactions including Visa charges and checks drawn on the account. Claimant further alleged that by September 4, 1991, Respondents account had a debit balance of 48,122.71 and subsequently, on September 5, 1991 Claimant sold, pursuant to the Account Documents, the 51 shares of Walmart Stock in the account. Claimant contended that the proceeds of the sale were applied to Respondents' debit balance in the account and throughout September, Respondents continued to debit the account. Claimant further contended that except for the initial deposit of 51 shares of Walmart Stores, Respondents have made no deposits into the account. Claimant asserted that despite many attempts by them to arrange for a transfer of funds by wire or certified check, Respondents have refused to pay the debit balance in the account.

Respondents John J. and Debra L. Irwin failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. requested \$5,704.68 in actual damages plus pre and post judgment interest as allowed by law together with reasonable attorney's fees provide both in the contract and in Chapter 38 of the Texas Civil Practice and Remedies Code.

Respondents John J. and Debra L. Irwin 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 Edward T. Bowen was selected to review and determined the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 15, 1992 and not by the Respondents as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

1. In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent is John J. and Debra L. Irwin were served by regular mail on January 28, 1992 and given an opportunity to respond, which they failed to do so.
2. Pursuant to the By-Laws of the NASD Code the arbitrator determined that Respondents John J. and Debra L. Irwin were required to submit to this 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 John J. and Debra L. Irwin are jointly and severally liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$5,704.68 on damages.
2. Respondents John J. and Debra L. Irwin are jointly and severally liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. simple interest at the Legal Statutory rate from September 30, 1991 to the date of the payment of the award.
3. Respondents John J. and Debra L. Irwin are jointly and severally liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$48.50, representing attorney's fees.

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 John J. and Debra L. Irwin are jointly and severally liable and shall pay to the Claimant the sum of \$575.00 as reimbursement.

AFFIRMATION

I, Edward T. Bowen 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.

Edward T. Bowen
Signature of Arbitrator

DATE OF DECISION: 1/8/93

DATED BY THE NASD, INC.: January 15, 1993