

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Merrill Lynch Pierce Fenner & Smith Inc

92-00034

Name of Respondent

Ivory Adolescent Center, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 3, 1992, Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc., by and through their counsel Gregory A. Pierce, Esq. of Gibbs & Ratliff, Houston, Texas, alleged that on April 18, 1991 Respondent Ivory Adolescent Center, Inc. opened a Working Capital Management Account with an opening balance of zero. Claimant further alleged that they debited the account in the amount of \$24.70 as a fee for the printing of checks for the account and subsequently on May 23, 1991 a \$7,000.00 check was deposited into the account which was returned as having insufficient funds, at which time, \$2,500.00 in checks were cleared through the account. Claimant contended that on May 31, 1991 the account was credited with a dividend of \$1.53 and on June 4, 1991 \$20.00 was debited as a fee for the returned check. Claimant further contended that on June 5, 1991, a check for \$618.00 cleared through the account and \$0.57 was credited to the account as a dividend. Claimant asserted that the total of debit made on the account was \$3,860.60 and the account agreement required Respondent to pay all debit balances upon demand. Claimant further asserted that although often requested to do so, Respondent has failed and refused to pay the debit balance.

Respondent Ivory Adolescent Center, Inc. failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. requested \$3,860.60 in actual damages plus pre and post-judgement interest as allowed by law and reasonable attorney's fees as provided both in the contract and in Chapter 38 of the Texas Civil Practice and Remedies Code.

Respondent Ivory Adolescent Center, Inc. failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent was served a copy of the Statement of Claim by regular mail on February 7, 1992 and given an opportunity to respond, which they failed to do.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Ivory Adolescent Center, Inc. was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Martha Failing, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 22, 1992 and not signed by the Respondent as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

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. Respondent Ivory Adolescent Center, Inc. is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$3,860.00 in damages.
2. Respondent Ivory Adolescent Center, Inc. is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. simple interest at the legal statutory rate from May 31, 1991 to the date of the payment of the award.

3. Respondent Ivory Adolescent Center, Inc. is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$180.00, 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. Respondent Ivory Adolescent Center, Inc. is liable and shall pay to the Claimant the sum of \$575.00 as reimbursement.

AFFIRMATION

I, **MARTHA FAILING**, 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: March 2, 1993