

PUBLIC

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

92-02845

Name of Respondent

John Munoz

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 24, 1992, Claimant Merrill Lynch Pierce Fenner & Smith, Inc., by and through their counsel A. Michael Ferrill, Esq., of Cox & Smith Incorporated, San Antonio, Texas, alleged that they assisted Respondent John Munoz in facilitating the exercise of his Mercury Finance Company employee stock options, and the subsequent sale of 650 shares of Mercury Finance stock on November 26, 1991. Claimant further alleged that after the sale was complete, Mercury Finance delivered to Respondent 216 shares of stock representing a stock dividend; however, because Respondent did not own the underlying 650 shares of Mercury Finance on December 5, 1991; the ex-dividend date; he was not entitled to the dividend; therefore, on December 12, 1991 the dividend was charged against Respondent's account, resulting in 216 share short position. Claimant contended that they requested that Respondent deposit the dividend share into his account to cover the deficit; however, Respondent did not do this, and his security agreement with Respondent agreed to indemnify Claimant and hold harmless "from all losses, claims, charges, interest and/or debits" resulting from the exercise of stock options. Claimant further contended that their efforts to collect the amount have not met with success.

Respondent John Munoz failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. requested \$3,492.51 in actual damages plus interest in the amount of \$141.28 together with attorney's fees in the amount of \$2,500.00 plus reimbursement of the NASD filing fee.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent John Munoz was served a copy of the Statement of Claim by regular mail on August 25, 1992 and given an opportunity to respond, which he failed to do. Respondent John Munoz was notified on October 19, 1992, via certified mail, that his Statement of Answer was overdue. The signed certified mail receipt was returned to the NASD dated October 26, 1992, evidencing his receipt of this correspondence. Respondent John Munoz failed to file an Answer to the Statement of Claim.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent John Munoz 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, Edward T. Bowen, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 14, 1992 and not 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 John Munoz is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$3,492.51 in damages.
2. Respondent John Munoz is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. interest in the amount of \$141.28.
3. Respondent John Munoz is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$2,500.00 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

Page Three
Award 92-02845

Lynch, Pierce, Fenner & Smith, Inc. shall be retained by the NASD, Inc. Respondent John Munoz is 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: MARCH 10, 1993