

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Merrill Lynch, Pierce, Fenner & Smith, Inc

92-02849

Name of Respondents

Fuel Systems, Inc.  
RHM Investments, Inc.

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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, San Antonio, Texas, alleged that in January 1990 Respondents RHM Investments, Inc. d.b.a. Fuel Systems, Inc. opened an account through Claimants' San Antonio office, at which time, they signed a true and correct copy of the Merrill Lynch Working Capital Management Agreement, which is an integrated financial services account with check writing and Visa card features. Claimant further alleged that this has a system of automatic overdraft loans which will permit clearance of a check written on a WCM Account that is approximately \$1,000.00 of the client's account balance; however, checks written in amounts significantly larger than the account balance may be returned unpaid to the presenter or if it discovered that a client is abusing the overdraft loan feature by failing to repay outstanding loans in a reasonable time period or if the amount of money loaned to a client exceeds an acceptable level. Claimant contended that Respondents had a \$7,149.52 deficit in their account as a result of 10 overdraft loans whereby Claimant credited to the account to accommodate payment of checks written in excess of the account balance. Claimant further contended that a secondary cause of the debit is a \$19,500.00 check deposited to the account that was not honored by its maker on the instructions of Respondents. Claimant asserted that Respondents' actions resulted in a debit balance in their account. Claimant further alleged that the WCM Account Agreement and Corporate Resolution indicated that Mr. Robert Moore had extensive control over the account and in a January 28, 1992 letter to Claimant Mr. Moore explained that Respondent Fuel Systems, Inc. had been liquidated but nonetheless Mr. Moore offered to make a personal settlement with Claimant to clear the balance. Claimant further alleged that after Respondent

Fuel Systems, Inc. began experiencing difficulty, Mr. Moore liquidated that entity and continued to transact business through a new corporation, Respondent RHM Investments, Inc.

Respondent RHM Investments, Inc., by and through its President Robert H. Moore, Jr., maintained that they deny all allegations of wrongdoing, and that they are an entity with absolutely no connection to Fuel Systems, Inc. and other than the fact that they purchased some assets with the right to utilize Fuel Systems, Inc. name, Mr. Moore is not now, nor has he ever been an officer, director or shareholder of Fuel Systems, Inc. Respondent RHM Investments, Inc. further maintained that it has never agreed to confirm to the NASD rules and regulations and tendered its refusal to be a party to this case.

Respondent Fuel Systems, Inc. by and through Michael W. Anderson, maintained that it is not, nor has it ever been an "alter ego of Moore" and in December, 1991 Mr. Moore's investment company RHM Investments, Inc. purchased the right to utilize the name of "Fuel Systems, Inc.", however, neither, Mr. Moore nor RHM Investments, Inc. assumed the liabilities of Fuel Systems, Inc. Respondent Fuel Systems, Inc. further maintained that it did not authorize Claimant to transact securities. Respondent further denied that it knowingly executed any agreement to forgo its rights to resolution to the court system and submit to arbitration.

### **RELIEF REQUESTED**

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. requested \$7,149.52 in actual damages plus unpaid interest in the amount of \$503.01 together with reasonable attorney's fees and expenses in the amount of \$2,500.00 and reimbursement of the NASD filing fee in the amount of \$575.00.

Respondent RHM Investment, Inc. never agreed to confirm to an organization to which they are not a member and refuses to be a party to this cause.

Respondent Fuel Systems, Inc. requested the claim be denied.

### **AWARD**


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, A. Bentley Nettles, Esq., 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 by the Respondents 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. Respondents RHM Investments, Inc. and Fuel Systems, Inc. are jointly and severally liable and shall pay to the Claimant Merrill Lynch, Fenner & Smith, Inc. the sum of \$7,149.52 in damages.
2. Respondents RHM Investments, Inc. and Fuel Systems, Inc. are jointly and severally liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$503.01, representing interest.
3. Respondents RHM Investments, Inc. and Fuel Systems, Inc. are jointly and severally liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$2,500.00, representing attorney's fees and expenses.
4. 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 RHM Investments, Inc. and Fuel Systems, Inc. are jointly and severally liable and shall pay to the Claimant the sum of \$575.00, as reimbursement.

**AFFIRMATION**

I, A. BENTLEY NETTLES, ESQ., do here 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: June 1, 1993