

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Merrill Lynch Pierce Fenner & Smith Inc

vs.

Award  
#92-02985

Name of Respondents

Hibbard Brown & Co., Inc.

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**REPRESENTATION**

For Claimant, Merrill Lynch Pierce Fenner & Smith Inc., ("Claimant") Stephen T. Paine from the law firm of Brown & Wood located in New York, New York.

For Respondent, Hibbard Brown & Co., Inc. ("Respondent") Steven B. Caruso, Executive Vice President and General Counsel of Hibbard Brown & Co., Inc. located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed September 4, 1992.  
Claimant's Submission Agreement signed on July 28, 1992

Statement of Answer filed by Respondent, Hibbard Brown & Co., Inc. on October 28, 1992.  
Respondent, Hibbard Brown & Co., Inc.'s Submission Agreement was signed on October 28, 1992.

**HEARING INFORMATION**

Pre-Hearing Conference: December 17, 1993 - 2 Sessions

Hearing Dates/Sessions: February 7, 1994 - 2 Sessions  
February 8, 1994 - 2 Sessions  
April 5, 1994 - 1 Session

Hearing Location: NASD, INC., 33 Whitehall Street, New York, N. Y.

**CASE SUMMARY**

Claimant commenced this action to collect damages sustained in connection with the sale of restricted DMEC stock.

Respondent denied liability and contended they did not receive the shares of restricted DMEC stock as required. As Respondents received no notice the stock was in transit, they issued their notice to buy-in.

**RELIEF REQUESTED**

Claimants requested \$141,981.87 plus interest and costs of collection, as well as such other relief as is just and proper.

Respondents requested the Statement of Claim be dismissed and that Respondent be awarded such relief as is just and proper including reimbursement of counsel fees.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Respondent submitted a Motion to Dismiss which was denied by the panel.

**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. Respondent Hibbard Brown & Co., Inc. shall pay the sum of \$141,981.87 in settlement of all claims to Claimant Merrill Lynch Pierce Fenner & Smith Inc.
2. The parties shall divide the forum fees equally between them.

Award #92-02985

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**FORUM FEES**

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

Non-refundable Filing Fee:	\$ 500.00
Non-refundable Hearing Session Fees:	\$3,750.00
(5 Sessions X \$750 = \$3,750)	
Pre-Hearing conference:	\$ 300.00
Total Fees:	\$4,550.00

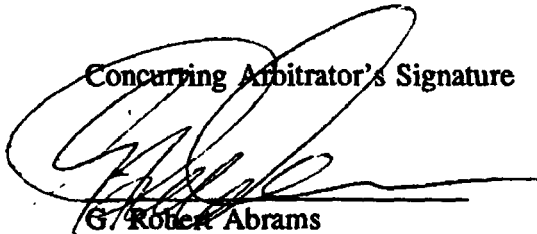
1. Claimant paid \$1,250 and owes \$1,025.00.
2. Respondent paid nothing and owes \$2,275.00.

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

**ARBITRATION PANEL**

G. Robert Abrams	-	Industry Chairperson
Irving Gindick	-	Industry Panelist
Edwin B. Peterson	-	Industry Panelist

Concurring Arbitrator's Signature



G. Robert Abrams

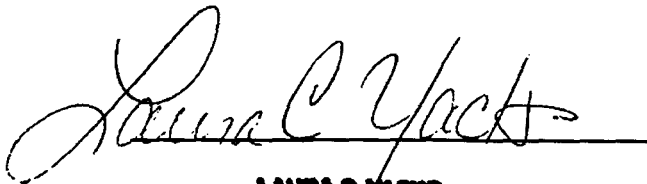
Industry Chairperson

NASD Date of Decision: September 9, 1994

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this                      day of                      , 1994, before me personally appeared *Robert Abra*  
~~Peter~~ known and known to me to be the individual described in and who executed the  
foregoing instrument and be duly acknowledged to me that he executed the same.



**LAURA C. YACOB**  
Notary Public, State of New York  
No. 31-4845791  
Qualified in New York County  
Commission Expires January 27, 1995

Award #92-02985

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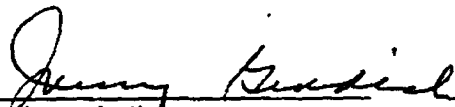
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Fees are payable to the National Association of Securities Dealers, Inc.

**ARBITRATION PANEL**

G. Robert Abrams	-	Industry Chairperson
Irving Gindick	-	Industry Panelist
Edwin B. Peterson	-	Industry Panelist

Concurring Arbitrator's Signature

  
Irving Gindick

Industry Panelist

Executed on:

~~DATE OF DECISION:~~

Aug 12, 1994

NASD Date of Decision: September 9, 1994

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 12 day of Aug, 1994, before me personally appeared IRVING  
GINDICK known and known to me to be the individual described in and who executed the  
foregoing instrument and be duly acknowledged to me that he executed the same.

Marie Bellino

MARIE BELLINO  
Notary Public, State of New York  
No. 4963303  
Qualified in Westchester County  
Commission Expires March 12, \_\_\_\_\_

1996

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**ARBITRATION PANEL**

G. Robert Abrams	-	Industry Chairperson
Irving Gindick	-	Industry Panelist
Edwin B. Peterson	-	Industry Panelist

Concurring Arbitrator's Signature

  
Edwin B. Peterson

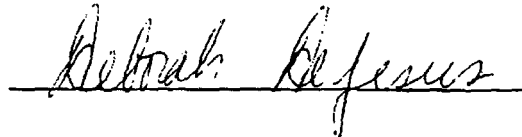
Industry Panelist

NASD Date of Decision: September 9, 1994

STATE OF: New York  
COUNTY OF: New York

S.S.:

On this 12 day of September, 1994, before me personally appeared Edwin B. Peterson known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

A handwritten signature in cursive script, reading "Deborah A. DeJesus", written over a horizontal line.

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County 96  
Commission Expires January 24, 1996