

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.

92-03143

Name of Respondent

MSD International, Inc.

REPRESENTATION

For Claimant: Merrill Lynch, Pierce, Fenner & Smith, Inc. was represented by Grant J. Harvey, Esq. of Gibbs & Ratliff, L.L.P.

For Respondent: MSD International, Inc. did not appear.

CASE INFORMATION

Statement of Claim filed: September 17, 1992.

Claimant's Submission Agreement signed on: September 22, 1992 by Frederick T. Cater, Administrative Manager, Merrill Lynch, Pierce, Fenner & Smith, Inc.

HEARING INFORMATION

Pre-Hearing Conference:	None held.
Hearing Date/Session:	May 21, 1993 for one (1) session.
Hearing Location:	Houston, Texas.

CASE SUMMARY

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") alleged that Respondent MSD International, Inc. ("MSD") opened a Working Capital Account on May 10, 1990 and that as of September 30, 1991, there was a debit balance in the account of \$12,722.66. It was further alleged that pursuant to the account agreements entered into by the parties, MSD was required to pay all debit balances upon demand, but has refused to do so.

Respondent MSD did not file a Statement of Answer or appear at the hearing.

RELIEF REQUESTED

Claimant Merrill Lynch requested entry of an award in the sum of \$12,722.66; pre-and post-judgement interest as allowed by law; reasonable attorneys' fees incurred in prosecuting the claim, as provided both in the customer agreement and in Chapter 38 of the Texas Civil Practice and Remedies Code; and any further relief to which it was justly entitled.

OTHER ISSUES CONSIDERED & DECIDED

Respondent MSD International, Inc. did not file a Statement of Answer or a Submission Agreement, and did not appear at the hearing. However, upon review of page 7 of the Customer Agreement which contained the agreement to arbitrate duly executed by the President of MSD International, Inc., and pursuant to Section 12 of the NASD Code of Arbitration Procedure, the arbitrator determined that Respondent MSD International, Inc. was required to submit to arbitration.

In addition, the arbitrator specifically finds that Respondent MSD International, Inc. was properly served with the Statement of Claim pursuant to Section 25 of the NASD Code of Arbitration Procedure. In addition, the arbitrator specifically finds that Respondent MSD International, Inc. received due notice of the hearing pursuant to Section 26 of the NASD Code of Arbitration Procedure. Therefore, pursuant to Section 29 of the NASD Code of Arbitration Procedure, the arbitrator determined that the arbitration would proceed in Respondent's absence, and that an award would be entered as if the Respondent had entered an appearance in the matter.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent MSD International, Inc. is liable for and shall pay to Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$12,722.66, plus simple interest at the rate of 6% per annum from 3-31-93 until paid;
2. In addition, Respondent MSD International, Inc. is liable for and shall pay to Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$1,929.10 as attorneys' fees. In determining to award attorneys' fees, the arbitrator considered Paragraph 8(c) of the Working Capital Management Account Agreement executed

by the Respondent. MSD International, Inc., and Chapter 38 of the Texas Civil Practice and Remedies Code, and determined that authority existed for an award of attorneys' fees in favor of Claimant Merrill Lynch, Pierce, Fenner, & Smith, Inc.:

3. The parties shall each bear their own costs of arbitration, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed: One (1) session x \$300.00 per hearing session = \$300.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 claim filing fee and the \$300.00 hearing session deposit previously deposited by the Claimant, Merrill Lynch, Pierce, Fenner & Smith, Inc.

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

Arbitrator's Signature

Name



Franklin Anthony Arnold, Esq.

Date

6/11/93

Date of Service on Parties:

6-17-93