

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

92-03592

Name of Respondent

Callie Smith

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 23, 1992, Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. by and through their counsel Michael D. Napoli, Esq. of Gibbs & Ratliff, Houston, Texas alleged that on February 13, 1990 Respondent Callie Smith, a public customer, made a \$3,125.00 deposit with a third party check issued by Spencer Brown & Brown, Ltd. of Atlanta, Georgia and through various transactions, Respondent debited the funds from the account. Claimant further alleged that on February 27, 1990 the check was returned unpaid, at which time, at Respondent's request, Claimant attempted to redeposit the check but it was once again returned unpaid on March 14, 1990. Claimant contended that the return of the deposit plus additional withdrawals made by Respondent, created an account debit of \$3,141.98. Claimant further contended that on August 14, 1990 Claimant paid \$279.53 against the account debit whereby this payment reduced the debit amount to \$2,862.45 and subsequently on September 26, 1990 Claimant created an overdraft on the account by withdrawing \$118.18. Claimant asserted that the amount of the overdraft when added to the previous debit balance creates a debit balance of \$2,980.63 and although often requested to do so, Respondent has failed and refused to pay the debit on the account.

Respondent Callie Smith failed to file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. requested \$2,980.63 in actual damages plus pre and post-judgement interest as allowed by law together with reasonable attorney's fees

in the amount of \$428.00 as provided both in the contract and in Chapter 38 of the Texas Civil Practice and Remedies Code.

Respondent Callie Smith 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 Callie Smith was served a copy of the Statement of Claim by regular mail on January 8, 1993 and given an opportunity to respond, which she failed to do.

Callie Smith was notified on February 24, 1993, via certified mail, that her Statement of Answer was overdue. The certified mail receipt was returned to the NASD as "unclaimed". This correspondence was re-sent regular mail and was not returned.

Respondent Callie Smith failed to file an Answer to the Statement of Claim.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Callie Smith 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, Justin S. Morrill, 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 November 30, 1992 and not by the Respondent as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

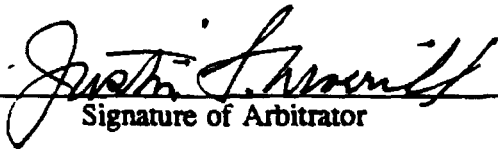
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Callie Smith is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$2,980.63 in damages.
2. Respondent Callie Smith is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. simple interest at the rate of 6% per annum from March 18, 1993 to the date of payment of the award.

3. Respondent Callie Smith is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$428.00, representing attorney's fees.
4. The \$75.00 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. The \$500.00 filing fee previously deposited with the NASD by the Claimant in reference to an earlier arbitration remains waived in the matter at hand.
5. Respondent Callie Smith is liable and shall pay to the Claimant the sum of \$575.00. as reimbursement.

AFFIRMATION

I, JUSTIN S. MORRILL, ESQ., 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: June 8, 1993