

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

92-03719

Name of Respondents

Edward H. Bruske
Megan Smith-Bruske (n/k/a Megan Smith)

REPRESENTATION

For Claimant Merrill Lynch Pierce Fenner & Smith Inc (referred to as "Claimant" or "Merrill Lynch"): Jeffrey P. Bloom, Esq. of the law firm of Metzger, Hollis, Gordon & Mortimer.

For Respondent Edward H. Bruske ("Mr. Bruske"): appeared pro se

For Respondent Megan Smith-Bruske (n/k/a Megan Smith and referred to herein as "Ms. Smith"): Stephen M. Salinger, Attorney at Law.

CASE INFORMATION

Statement of Claim filed: November 2, 1992

Claimant's Submission Agreement signed on: October 19, 1992

Claimant's Answer to Counterclaim filed: February 18, 1993

Statement of Answer and Counter Claim filed by Mr. Bruske on: March 24, 1993

Mr. Bruske's Cross-Claim filed on: March 24, 1993

Mr. Bruske's Submission Agreement signed on: December 29, 1992

Statement of Answer in letter form from Ms. Smith filed: December 28, 1992

Answer to Mr. Bruske's Cross-Claim filed: April 13, 1993

Ms. Smith's Submission Agreement signed on: April 9, 1993

CASE SUMMARY

This matter is before the NASD on the original complaint filed by Merrill Lynch on November 2, 1992 against Edward Bruske and Megan Smith-Bruske for the reimbursement of funds claimed by Merrill Lynch to be due from the Respondents for reimbursement of \$2,835.50 for a check deposited in the Respondents' joint CMA account and subsequently back charged against their account, plus costs and attorneys fees. Merrill Lynch alleged that the actions of Respondents constituted a breach of contract. Subsequent to the filing of its original claim, and after having received reimbursement of the aforesaid \$2,835.50, Merrill Lynch modified its claim against the Respondents and seeks \$3,411.89 for its fees and costs in pursuing its original claim and defending against Mr. Bruske's counterclaim

Mr. Bruske filed his answer and denied all allegations of wrongdoing and counterclaimed against Merrill Lynch for damages incurred as a result of Merrill Lynch's alleged improper role in the back-charging of the aforesaid check and in its subsequent pursuit of this matter, and seeks \$15,000 in compensatory damages and \$15,000 in punitive damages. Mr. Bruske further counterclaimed against Merrill Lynch on the grounds of wanton and reckless failure to exercise reasonable care, wrongful conversion, unjust enrichment, breach of good faith, breach of contract, fraudulent concealment, abuse of process and intentional infliction of emotional distress.

Merrill Lynch categorically denied all allegations of wrongdoing asserted by Mr. Bruske.

Mr. Bruske cross-claimed against Ms. Smith, and alleged fraud, wanton and reckless breach of contract, abuse of process and intentional infliction of emotional distress. In Mr. Bruske's cross-claim against Ms. Smith, he seeks \$15,000 for intentional infliction of emotional distress allegedly arising out of Ms. Smith's role in the check backcharge, and \$15,000 in punitive damages for her alleged outrageous and malicious behavior.

Ms. Smith in a letter which answered Merrill Lynch's claim maintained that a check had been deposited in her joint account at Merrill Lynch, that the monies were then withdrawn by Mr. Bruske and that a back charge occurred. Ms. Smith denied all allegations of wrongdoing by her and maintained that she never received any monies from the original check that was deposited in the amount of \$2835.50.

Ms. Smith answered the cross-claim and categorically denied all allegations of fraud, wanton and reckless breach of contract, abuse of process and intentional

infliction of emotional distress.

OTHER ISSUES CONSIDERED & DECIDED

This matter was originally filed with the intent of holding hearings before a single public arbitrator; the parties subsequently waived the hearings and requested a decision based upon their submissions in this matter.

AWARD

Pursuant to the Code of Arbitration Procedure Marvin Elster, Esq. was selected as the sole arbitrator to review and determine the matter in controversy between the parties as set forth in their submission agreements properly signed and filed with the NASD. After having considered the pleadings, the written submissions, the briefs filed and all other proof filed by the parties, the Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Award in favor of Merrill Lynch and against Respondent Edward H. Bruske for attorneys fees in the amount of \$1,000.
2. That Edward H. Bruske's counterclaim is denied in its entirety.
3. That Edward H. Bruske's cross claim against Megan Smith-Bruske is denied in its entirety.
4. That all other claims, including Edward H. Bruske's claims for punitive damages are denied in their entirety.
5. That \$75 filing fee deposited by Merrill Lynch shall be retained by the NASD, Inc. Respondent Mr. Bruske's counterclaim fee of \$300 shall be retained.

AFFIRMATION

Marvin Elster, 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.

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Arbitrator's Signature
Name


Marvin Elster, Esq.

Public/Industry

PUBLIC

Date of Decision: 12-30-93

STATE OF: Maryland

COUNTY OF: Montgomery

ON THIS 30 DAY OF Dec., 1993 BEFORE ME PERSONALLY APPEARED Marvin Elster, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Patricia A. O'Brien

My Commission Expires: 7/21/97

NASD Date of Decision: January 5, 1994