

## N.A.S.D. AWARD

## NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration BetweenName of Claimant

Merrill Lynch Pierce Fenner &amp; Smith Inc

92-03939

Name of RespondentVista Income Properties, Inc., f/k/a O.B.I.C. Corporation

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 20, 1992, Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc., by and through their counsel Michael D. Napoli, Esq. of Gibbs & Ratliff, Houston, TX, alleged that Respondent Vista Income Properties, Inc. f/k/a O.B.I.C. Corporation owns an account which was opened and executed on behalf of Respondent by James Watson, it's president, with a resolution of the board of directors of authorizing the opening of the account. Claimant further alleged that Respondent owes them money by virtue of a debit balance in the account, and despite repeated requests, Respondent has refused to pay the debit balance. Claimant contended that the account documents require Respondent to pay all debit balances on demand, which Respondent has failed to do. Claimant further contended that Respondent breached the account agreement and has been unjustly enriched at Claimant's expense.

Respondent Vista Income Properties, Inc., by and through William P. Wenson, Vice President, maintained that Mr. James Watson originally opened the account to be used by him personally, and Mr. Jeffrey M. Haladyna of Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. agreed to this opinion. Respondent further maintained that the account was not Respondent's responsibility but the sole responsibility of James Watson, who is currently employed by Kemper Securities, Inc., thus the claim should be denied.

RELIEF REQUESTED

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. requested \$3,052.70 in actual damages plus pre and post judgement interest and reasonable attorney's fees as provided both in the contract and in Chapter 38 of the Texas Civil Practice and Remedies Codes.

Respondent Vista Income Properties, 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, Kathryn P. Beller, 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 January 19, 1993 and not signed 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 Vista Income Properties, Inc. is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$1,220.50 in damages.
2. Respondent Vista Income Properties, Inc. is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. simple interest at the rate of 10% per annum from February 11, 1992 to the date of payment of the award.
3. Respondent Vista Income Properties, Inc. is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$300.00, representing attorney's fees.
4. The parties shall bear their respective costs.
5. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. shall be retained by the NASD, Inc. Respondent Vista Income Properties, Inc. is liable and shall pay to the Claimant the sum of \$575.00, as reimbursement.

**AFFIRMATION**

I, KATHRYN P. BELLER, 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.

*Kathryn Beller*

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Signature of Arbitrator

DATE OF DECISION: July 29, 1993