

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.

93-00273

Name of Respondent

Jim Bennett

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 2, 1993, Merrill Lynch, Pierce, Fenner & Smith, Inc., by and through their counsel Robert J. Madden, Esq. of Gibbs & Ratliff, L.L.P., Houston, Texas, alleged that Respondent Jim Bennett, Public Customer, owns a Cash Management Account which account was secured by several thousand shares of common stock of Sbarro, Inc. and on May 21, 1992, Respondent's account contained 4,500 shares of Sbarro, Inc., with a market value of \$112,251.37. Claimant further alleged that also on May 21, 1992, Respondent's account reflected a debit balance of \$118,856.85, which was a result of a series of transactions which are reflected in the account statements, at which time, Claimant's representatives spoke to Respondent concerning the unsecured debit in his account whereby Respondent indicated that he had no finances to meet this debit. Claimant contended that on May 21, 1992, in accordance with the Account Agreement, and in order to protect its assets, Claimant sold Respondent's 4,500 shares of Sbarro, Inc. at the market price of \$112,251.37, which resulted in a debit balance in Respondent's account of \$6,605.48. Claimant further contended that in addition to the debit balance, Respondent's account also owes margin interest in the amount of \$700.41, additional charges in the amount of \$10.96, and an unpaid debit balance of \$1,122.49 on Respondent's Visa Gold Card. Claimant asserted that the account documents require Respondent to pay all debit balances upon demand and although often requested to do so, Respondent has failed and refused to pay the debit on the account.

Respondent Jim Bennett failed to file a Statement of Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. requested \$8,439.34 in actual damages together with pre- and post-judgement interest as allowed by law, and the reasonable attorneys' fees Claimant incurred in prosecuting this claim, as provided for in both the Account Agreement, and in Chapter 38 of the Texas Civil Practice and Remedies Code.

Respondent Jim Bennett failed to file a Statement of Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure the Respondent Jim Bennett was served a copy of the Statement of Claim by regular mail on March 19, 1993 and given an opportunity to respond, which he failed to do. Respondent Jim Bennett was notified on April 30, 1993, via certified mail, that his Statement of Answer was overdue. The signed certified mail receipt was returned to the NASD dated May 10, 1993, evidencing his receipt of this correspondence. Respondent Jim Bennett was notified on June 1, 1993, via certified mail, of the selected arbitrator pursuant to Section 21 of the NASD Code of Arbitration Procedure. The signed certified mail receipt was returned to the NASD dated June 7, 1993, evidencing his receipt of this correspondence. Respondent Jim Bennett failed to file an Answer to the Statement of Claim.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Jim Bennett 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, Stanley Stein, 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 March 4, 1993 and not signed by the Respondent as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

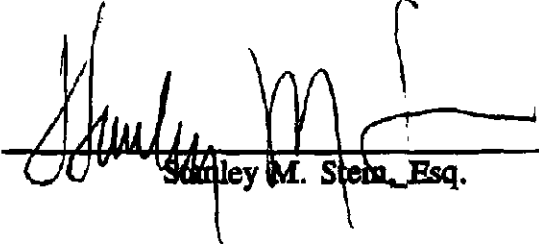
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Jim Bennett is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$8,439.34 in damages.

2. Respondent Jim Bennett is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. simple interest at the rate of 6% per annum from May 21, 1992 to the date of payment of the award.
3. Respondent Jim Bennett is liable and shall pay to the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$451.25, 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. by the Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. shall be retained by the NASD, Inc. Respondent Jim Bennett is liable and shall pay to the Claimant the sum of \$575.00, as reimbursement.

AFFIRMATION

I, STANLEY M. STEIN, 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.


Stanley M. Stein, Esq.

DATE OF DECISION: September 27, 1993