

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
In the matter of the Arbitration Between

Name of Claimant

Robbins General Contractors, Inc.

**NASD Arbitration
No. 93-01473**

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

REPRESENTATION

For Claimant: Ruth A. Lee - Robbins General Contractors, Inc., - San Francisco, Ca.

For Respondent: David J. Romanski, Esq. - Steinhart & Falconer - San Francisco, Ca.

CASE INFORMATION

Statement of Claim filed: April 14, 1993

Claimant's Submission Agreement signed: April 7, 1993

Statement of Answer filed by Respondent: June 14, 1993

Respondent's Submission Agreement signed: June 9, 1993

HEARING INFORMATION

Pre-Hearing Conference Date / Session: None

Hearing Date / Sessions: November 9, 1993

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant, Robbins General Contractors, Inc. (Robbins), alleged that Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. (ML), caused a double payment of \$12,354.00 when ML wire transferred \$12,354.00 from Robbins account while paying a check for the same amount to the same party. Robbins alleged that ML should have notified them to issue a "stop payment" once the wire payment was made.

ML alleged that, prior to instructing ML to wire transfer funds to the third party's account, Claimant was negligent in not retrieving its check and or placing a stop payment on the instrument.

RELIEF REQUESTED

Claimant seeks recovery of the \$12,354.00 over payment.

Respondent seeks dismissal of the claim in its entirety plus costs.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remains on file with the NASD.

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. The arbitrator found that both claimant and respondent were negligent, with Claimant, Robbins General Contractors, Inc., responsible for 75% of the loss claimed and Respondent Merrill Lynch Pierce Fenner & Smith, Inc. responsible for 25% of the amount claimed. Therefore, Respondent shall pay Claimant the sum of \$3,078.70 to fully satisfy all claims made.
2. The parties shall each bear their respective costs and fees.
3. Respondent shall pay to Claimant \$75.00 in partial reimbursement of the Claimant's hearing session deposit.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

Total Fees:

One Session @ \$300.00 / session - \$300.00

The NASD shall retain the hearing session deposit of \$300.00.

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

ARBITRATOR

Name

Lester Friedman
Lester Friedman, Esq.

Public / Industry

Public Chairperson

Concurring Arbitrator's Signature

Served 11/17/93