

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimants

Betty and Y.F. Chen

93-02355

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

---

**REPRESENTATION**

For Claimants: John L. Moncrief, Esq., New York, NY.

For Respondents: Sol Freedman, Esq., of the law firm of Freedman and Spector, Rockville Center, NY.

**CASE INFORMATION**

Statement of Claim filed: June 24, 1993.

Claimants' Submission Agreement signed on: June 18, 1993.

Statement of Answer filed by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.: October 4, 1993.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed on: October 4, 1993.

**HEARING INFORMATION**

Hearing Dates/Sessions:	April 15, 1994	-	One Session
	May 11, 1994	-	Two Sessions
	May 12, 1994	-	Three Sessions
	May 20, 1994	-	Two Sessions

Hearing Location: National Association of Securities Dealers, Inc., offices located in New York City, New York.

## CASE SUMMARY

Claimant Betty Chen alleged that on approximately July 19, 1988, she opened a Cash Management Account ("CMA") with Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), depositing approximately \$48,972.00 into the account; that Respondent prepared a check payable to the order of Betty Chen for \$13,000.00 and delivered it to a person unknown to Claimant; and that such check was endorsed with a forged signature of the Claimant, marked "payable to Richard Wu" who is believed to have endorsed and deposited the check into an account of Pac-Lantic Corporation. Claimants also alleged that the amount of the check was debited against the CMA account and thereafter deducted from the account; that shortly after the issuance of the check, the CMA account in the name of Betty Chen was closed; and that Betty and Y.F. Chen opened a joint CMA account. Claimants further alleged that upon information and belief, all investments, credits and debits, including the debit for \$13,000.00, were carried over to this new account; that Respondent treated the payment of the check as a loan to Betty Chen; and that Respondent charged claimants interest in the amount of \$3,986.30 from the date of the check on or about September 26, 1988 until approximately March 4, 1991.

Claimants further alleged that claimant Betty Chen hardly reads, writes, or speaks English and that Mr. Jimmie Joseph, a Merrill Lynch Financial Consultant, should have known this fact; that claimant Betty Chen never instructed Respondent to loan her \$13,000.00; and that she did not direct Respondent to write or deliver the check. Moreover, Claimants alleged that claimant Betty Chen never received nor benefitted from the proceeds of the check; that Claimants have no relationship with Richard Wu or Pac-Lantic Corporation nor do Claimants have knowledge of their whereabouts; and that Ms. Chen did not discover the \$13,000.00 debit against her account until approximately March 6, 1991 at which time she and Mr. Chen closed their joint account. Claimants also alleged that Respondent breached express and implied covenants in its contract or obligation of due care by the foregoing events and that Claimants have been damaged in the amount of \$13,000 plus interest in the amount of \$3,986.30 from approximately September 26, 1988.

Respondent maintained that Claimant Betty Chen first opened an investment account with Merrill Lynch in July of 1988; that Claimant opened a CMA on approximately July 19, 1988 for a total of \$48,962.16; and that on August 15, 1988, claimant Betty Chen authorized and invested a total of \$47,993.15 in 4195 units of the Colonial Government Securities Plus Fund. Respondent also maintained that after discussing two alternatives for withdrawal of funds, claimant Betty Chen elected to borrow funds against the value of the securities she owned; that neither Merrill Lynch nor Mr. Joseph were aware or informed that claimant Betty Chen could not read, write, or understand English; and that pursuant to Ms. Chen's request, Mr. Joseph issued a check the amount of \$13,000.00 on September 26, 1988 and personally delivered it to her at the Fifth Avenue

Financial Center Office. In addition, Respondent maintained that at no time after receiving monthly statements or a receipt confirming the issuance and delivery of the check did Claimants notify Merrill Lynch or Mr. Joseph of a discrepancy or error; that several days after the issuance of the check, Betty Chen closed her individual account; and that Betty Chen transferred all outstanding positions into a CMA account jointly held with Y.F. Chen. Further, Respondent maintained that according to the agreement entered into by Claimants when the accounts were established, the statement is deemed conclusive if not objected to within 10 days, and Claimants did not do so; that on information and belief, Claimants subsequently loaned the proceeds of the check to Pac-Lantic Corp., and thus, her remedy for recovery is clearly not with Merrill Lynch.

Respondent also maintained that Claimants have waived their right to recovery; that Claimants are estopped from complaining by failing to exercise reasonable care in examining the monthly statements; and that Claimants are barred by the applicable statute of limitations.

#### **RELIEF REQUESTED**

Based upon the forgoing, Claimants requested an award against Respondent for the following:

1. Compensatory damages in the amount of \$3,986.30 plus \$13,000 debited from the account in dispute; and
2. Interest accrued on \$13,000 from approximately September 26, 1988.

Respondent requested that the arbitration panel find in Respondent's favor as follows:

1. All claims as against Respondent be dismissed in their entirety; and
2. All costs be assessed against Claimants.

#### **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. All claims against the Respondent be and hereby are dismissed in their entirety;
2. Each party shall bear their respective costs, including attorneys'

fees.

3. Respondent be and hereby is liable and shall reimburse the claimant \$200.00 representing one-half of the forum fees previously deposited with the NASD (\$100.00 non-refundable filing fee and \$300.00 hearing session deposit.)

### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.


8 sessions X \$300 = \$2,400 minus hearing session deposit of \$300.00 = net \$2,100 due.

1. Claimant be and hereby is liable and shall pay to the NASD the sum of \$1,050.00 representing one-half of all outstanding forum fees.
2. Respondent be and hereby is liable and shall pay to the NASD the sum of \$1,050.00 representing one-half of all outstanding forum fees.

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

Concurring Arbitrator's Signature

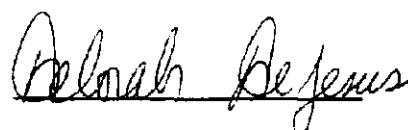
Name

  
Cynthia L. Boyce, Esq.  
Chairperson - Public Arbitrator

STATE OF NEW YORK

COUNTY OF

On this 5<sup>th</sup> day of August, 1994, before me personally appeared Cynthia L. Boyce, Esq. known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.



DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County  
Commission Expires January 24, 1996

Date of Decision: August 9, 1994