

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Michael Nusinow

93-03205

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

---

**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on August 17, 1993, Claimant Michael Nusinow, who appeared Pro Se, alleged that on June 23, 1993, Claimant's broker, Mr. Kevin Dickey, informed Claimant that the September 25 Walmart calls (options) closed at 1 3/4 the previous day. Claimant further alleged that he instructed Mr. Dickey to purchase 100 September 25 Walmart calls at the open and upon completion of the purchase of the calls, to sell 800 shares of Nestle. Claimant contended that on June 17, 1993 he had been notified by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. that his account had been transferred to Kidder, Peabody & Co., Inc. and his CMA account with Respondent had been closed. Claimant further contended that Mr. Dickey subsequently informed him that the transfer had been stopped due to a letter sent by Claimant authorizing the transfer to be canceled. Claimant asserted that he never wrote such a letter, and Respondent has failed to produce the letter. Claimant further asserted that the trades were never executed. Claimant further alleged that Respondent, by and through Mr. Jack Ennis of their transfer department, was notified within minutes of the problem and failed to take action. Claimant further contended that on June 25, 1993 he notified Respondent to liquidate his position at 2 5/8 on the September 25 Walmart Calls. Claimant further asserted that Respondent's failure to transfer his account resulted in lost profits for which Respondent should be held liable.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its in-house counsel, Marie A. Vavra-Coleman, maintained that it acted in a commercially reasonable manner, consistent with its obligations and responsibilities toward Claimant Michael Nusinow. Respondent further maintained that Claimant is estopped from making the claims set forth because the acts or omissions by Respondent in no way prevented or contributed to Claimant's alleged inability to place the trades in question. Respondent contended that Claimant failed to mitigate any damages

incurred by failing to place the order with Respondent, and that Claimant was fully aware that he could have done so. Respondent further contended that Claimant has suffered no damages as a result of any action by Respondent. Respondent asserted that Claimant continued to hold his Nestle position for 20 days after his transfer was completed and nearly one month after he claims he wanted to liquidate it.

### **RELIEF REQUESTED**

Claimant Michael Nusinow requested \$8,600.00 in actual damages.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested that all Claimant's claims for damages be denied and that the costs of the proceeding be assessed against the Claimant.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Joe B. Abbey, 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 August 10, 1993 and by the Respondent on September 30, 1993.


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. The claim of the Claimant Michael Nusinow against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is dismissed in its entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Michael Nusinow shall be retained by the NASD, Inc.

Page Three  
Award 93-03205

**AFFIRMATION**

I, JOE B. ABBEY, 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.

  
\_\_\_\_\_  
Signature of Arbitrator

DATE OF DECISION: March 18, 1994