

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.

93-04789

Name of Respondent

Michael Hamilton

REPRESENTATION

For Claimant: Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") was represented by Robert J. Madden, Esq. of Gibbs & Bruns, L.L.P., located in Houston, Texas.

For Respondent: Michael Hamilton ("Hamilton") did not appear at hearing.

CASE INFORMATION

Statement of Claim filed: November 18, 1993.

Claimant's Submission Agreement signed on: January 5, 1994 by Frederick T. Cater, Administrative Manager, Merrill Lynch, Pierce, Fenner & Smith, Inc.

Supplement to the Statement of Claim filed: December 12, 1994

Hamilton did not file an executed submission agreement or a Statement of Answer.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: December 12, 1994 for One (1) session.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant alleged that Hamilton, a Merrill Lynch customer, owed a debit balance on his account after depositing checks he endorsed which were returned unpaid. Merrill Lynch specifically alleged that:

1. Hamilton individually owned Merrill Lynch account no. 582-26X04 and was solely responsible for all obligations under the account;
2. On January 1, 1993, Hamilton's account contained \$538.59. From January 1, 1993 to April 30, 1993, Hamilton made various deposits and withdrawals. Forty-eight of the deposits were checks endorsed by Hamilton that were returned unpaid. As a result, Hamilton accumulated a debit balance in his account of \$20,429.06 as of July 1, 1993;
3. The account documents signed by Hamilton require that he pay all debit balances. Hamilton has refused to pay after it was requested that he do so, and has breached the account agreement; and
4. By endorsing the returned checks, Hamilton agreed to pay Merrill Lynch the face amount in the event the checks were returned unpaid. Merrill Lynch notified Hamilton of the refusals to pay and made demand for payment.

Respondent did not file a Statement of Answer.

RELIEF REQUESTED

Claimant requested entry of an award against Hamilton in the sum of \$20,429.06 to repay the debit balance on the account; pre- and post-judgment interest as allowed by law; reasonable attorneys' fees as provided for in the account agreement; and for any further relief to which it showed itself entitled. In the Supplement to the Statement of Claim, Merrill Lynch requested prejudgment interest, pursuant to Tex. Rev. Civ. Stat. art 5069-1.04, at the contract rate of eighteen (18%) per cent annual from the date of July 2, 1993 to the present. As of December 12, the prejudgment interest due was in the amount of \$5,298.88. Merrill Lynch also sought post-judgment interest from the date of the award, pursuant to Tex. Rev. Civ. Stat. Ann. art 5069-1.05, at the contract rate of eighteen (18%) per cent compounded annually.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Hamilton did not file an executed submission agreement or Statement of Answer, and did not appear at the hearing. The Panel reviewed the Merrill Lynch Cash Management Account Application and Agreement signed by Hamilton on August 14, 1992 and determined

that the NASD had jurisdiction pursuant to Section 12(a) of the NASD Code of Arbitration Procedure. Upon review of the file and the Claimant's presentation, the Panel determined that Respondent Michael Hamilton had been served with the Statement of Claim and Notice of Hearing as required by Section 25 and Section 26 of the Code respectively. Therefore, pursuant to Section 29 of the NASD Code of Arbitration Procedure, the Panel proceeded with the arbitration of the controversy.

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

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Michael Hamilton is liable for and shall pay to Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$20,429.06, plus interest at the rate of eighteen (18%) per cent per annum, interest to accrue from July 2, 1993 until the award is paid in full;
2. In addition, Respondent Michael Hamilton is liable for and shall pay to Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$893.75 as attorneys' fees. In deciding to award attorneys' fees, the Panel considered the Cash Management Account Application and Agreement signed by Respondent Hamilton on August 14, 1992, and determined that authority existed for an award of attorneys' fees to the Claimant from the Respondent; and
3. Any relief not specifically granted is hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) hearing session x \$600.00 per session = \$600.00.

The National Association of Securities Dealers, Inc. shall retain the \$500.00 claim filing fee and the \$600.00 hearing session deposit previously deposited by the Claimant, Merrill Lynch, Pierce, Fenner & Smith, Inc. Respondent Michael Hamilton is liable for and shall pay to Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$1,100.00 as reimbursement of the claim filing fee and hearing session deposit.

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

Concurring Arbitrators' Signatures
Name

Date

/s/ George A. Sellnau, Esq.
George A. Sellnau, Esq.
Public Arbitrator
Chairperson

March 27, 1995

/s/ Robert L. Bundschuh
Robert L. Bundschuh
Public Arbitrator

March 26, 1995

/s/ Richard R. Morton
Richard R. Morton
Industry Arbitrator

March 23, 1995

For NASD Use Only
Date of Service of Award: April 3, 1995