

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

**Rubin Edelstein**

**93-04999**

**Name of Respondent**

**Merrill Lynch Pierce Fenner & Smith, Inc.**

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**REPRESENTATION**

**For Claimant Rubin Edelstein ("Claimant") appeared Eric S. Edelstein, Esq., a sole practitioner located in Hollis, New York.**

**For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") appeared Samuel A. Turvey, Esq., Vice President and Senior Counsel of Merrill Lynch, Pierce, Fenner & Smith, Inc.**

**CASE INFORMATION**

**Statement of Claim filed: December 2, 1993.**

**Claimant's Submission Agreement signed on: November 30, 1993.**

**Statement of Answer filed: March 11, 1994.**

**Respondent's Submission Agreement signed on: November 11, 1994.**

**HEARING INFORMATION**

**Hearing Date/Sessions: November 11, 1994 - Two Sessions**

**The hearings were held at the National Association of Securities Dealers, Inc's offices located in New York City, New York.**

## **CASE SUMMARY**

Claimant alleged that he was a licensed distributor for Snapple Beverage Corp. Claimant further alleged that, in November 1992, he was informed by Snapple Holding Company that a public offering of Snapple common stock was going to be made and that a reserve share program had been set up, through which Snapple distributors could reserve up to 1000 shares.

Claimant alleged that he sent a Reservation Form to Respondent to reserve 1000 shares of the stock, but that, after the public offering was made, he did not receive a confirmation of his purchase. Claimant alleged that, when he inquired, he was told by an employee of Respondent that the shares had not been purchased because Claimant's brother was a broker employed by Respondent.

Claimant alleged that he was entitled to purchase the 1000 shares because he was a licensed distributor for Snapple Beverage Corp. In addition, Claimant alleged that he was prepared to purchase the 1000 shares at \$20.00 per share for a total of \$20,000.00. Claimant also alleged that, if the shares had been purchased, he would own 4000 shares because the shares had since split twice. Finally, Claimant alleged that, at the time the Statement of Claim was written, the stock was selling for approximately \$25.00 per share.

Respondent denied all charges of wrongdoing and liability. Respondent maintained that the initial notice that Claimant received regarding the reserve share program informed Claimant that there was no assurance that anyone would receive the number of shares requested and that any ultimate sales were subject to final clearance under relevant state and federal securities laws.

Respondent alleged that the Reservation Form Claimant sent to Respondent revealed that Claimant's brother was a financial consultant employed by Respondent. Further, Respondent alleged that Claimant's brother was the consultant servicing Claimant's account. Respondent also alleged that Claimant had not engaged in any transactions in his account with Respondent for over twelve months.

Respondent maintained that, based on the information revealed in the Reservation Form, it was determined that Claimant was not eligible to purchase the shares because the purchase would have violated the NASD Rules of Fair Practice Article III, Section 1. Respondent maintained that, under the title "Free-Riding and Withholding - Interpretation" at ¶2151.06, it would have been improper to sell Claimant the securities because Claimant was a member of the immediate family of a financial consultant who was employed by Respondent. Respondent further maintained that, although there was a limited exception to the rule if the securities were sold to the family member in accordance with the family member's normal investment practice, Claimant's attempted purchase did not fit within the exception because Claimant's account had been inactive for some time,

and therefore, the attempted purchase was not Claimant's normal investment practice.

### **RELIEF REQUESTED**

The Claimant requested damages in the amount of \$80,000.00, representing the current market value of the shares at the time the Statement of Claim was written less the original purchase price. In the alternative, Claimant requested to be permitted to purchase 4000 shares of Snapple common stock for the original purchase price of \$20,000.00.

Respondent requested that the Statement of Claim be dismissed in its entirety, that the costs and expenses of the arbitration proceeding be assessed against the Claimant and that it be awarded such other relief that is deemed just and proper.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have 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 parties have 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 be and hereby is liable and shall pay to the Claimant the sum of \$36,000.00.
2. Each party shall bear their respective costs, including attorney's fees, except that Respondent is liable and shall pay the sum of \$75.00 to the Claimant to reimburse the Claimant for a portion of the fees he paid to the NASD.
3. All other claims be and hereby are denied.

### **FORUM FEES**

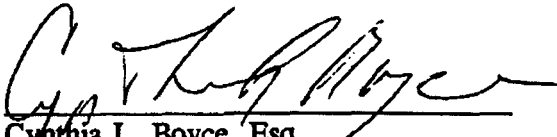
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

non-refundable filing fee:	\$ 150.00
2 hearing sessions x \$500.00:	<u>\$1,000.00</u>
	\$1,150.00

1. Claimant be and hereby is liable in the sum \$575.00 representing one half of the forum fees assessed. Claimant previously deposited the sum of \$650.00 with the NASD which shall be applied towards the forum fees assessed. Therefore, nothing is owed to the NASD by the Claimant.
2. Respondent be and hereby is liable in the sum of \$575.00 representing one half of the forum fees assessed. Respondent shall pay the sum of \$500.00 to the NASD representing the outstanding balance of the forum fees due and owing to the NASD.

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

**ARBITRATORS SIGNATURES**

  
Cynthia L. Boyce, Esq.  
Public Chairperson

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Harry Weiss  
Public Arbitrator

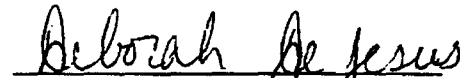
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Herbert Z. Geiger, Esq.  
Industry Arbitrator

Date of Decision: December 21, 1994

STATE OF: NY

COUNTY OF: NY ss:

On this 20 day of December, 1994, before me personally appeared Cynthia L. Boyce, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County 96  
Commission Expires January 24, 1996

STATE OF:

COUNTY OF: ss:

On this       day of       , 1994, before me personally appeared Harry Weiss known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she executed the same.

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STATE OF:

COUNTY OF: ss:

On this       day of       , 1994, before me personally appeared Herbert Z. Geiger, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

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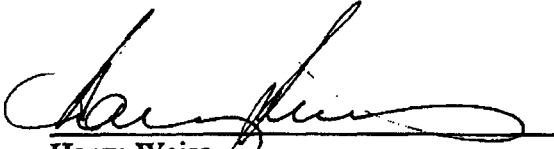
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**ARBITRATORS SIGNATURES**

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Cynthia L. Boyce, Esq.  
Public Chairperson



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Harry Weiss  
Public Arbitrator

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Herbert Z. Geiger, Esq.  
Industry Arbitrator

Date of Decision: December 21, 1994

STATE OF:

COUNTY OF: ss:

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

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STATE OF: *NEW YORK*

COUNTY OF: *WESTCHESTER* ss:

On this *19<sup>th</sup>* day of *DECEMBER*, 1994, before me personally appeared Harry Weiss known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she executed the same.

*Carol Weiss*

**CAROL WEISS**  
Notary Public, State of New York  
No. 6007069  
Qualified in Westchester County,  
Commission Expires Jan. 19, 19*95*

STATE OF:

COUNTY OF: ss:

On this       day of       , 1994, before me personally appeared Herbert Z. Geiger, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

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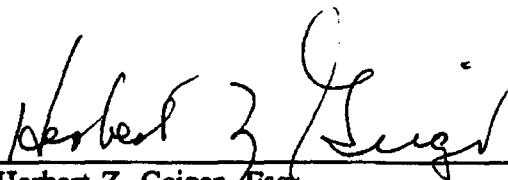
**ARBITRATORS SIGNATURES**

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Cynthia L. Boyce, Esq.  
Public Chairperson

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Harry Weiss  
Public Arbitrator



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Herbert Z. Geiger, Esq.  
Industry Arbitrator

Date of Decision: December 21, 1994



STATE OF:

COUNTY OF:

ss:

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STATE OF:

COUNTY OF:

ss:

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STATE OF: *New York*

COUNTY OF: *NY*       ss:

On this *19th* day of *December*, 1994, before me personally appeared Herbert Z. Geiger, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



VALERIE I. BAILEY  
Notary Public, State of New York  
No. 24-4940303  
Qualified in Kings County  
Expires July 18, 1999 *le*