

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Kathy Garver

94-00440

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Howard Cohn

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 4, 1994, Claimant Kathy Garver, who appeared Pro Se, alleged that Respondent Howard Cohn, of the Respondent firm Merrill Lynch, Pierce, Fenner & Smith, Inc., cancelled her order to purchase 100 shares of Gymboree stock at \$28.00 per share. The Claimant contended that by cancelling this purchase order without her authorization, the Respondents violated her instructions and breached their fiduciary duty, and that therefore the Respondent should be held liable for the damages she has suffered.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Howard Cohn, through their in-house counsel, Christopher D. Cavuoti, Esq., maintained that the Claimant cancelled the order to purchase the Gymboree stock, and further that she has not to date purchased the 100 shares in question, therefore she has put up no money or assumed any risks. The Respondents contended that the Claimant has suffered no damages.

RELIEF REQUESTED

Claimant Kathy Garver requested \$1,825.00 in actual damages, plus interest and return of the NASD filing fee.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Howard Cohn requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Marc David Freed, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 1, 1994, by the Respondent Howard Cohn on May 19, 1994 and by the Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on May 16, 1994.

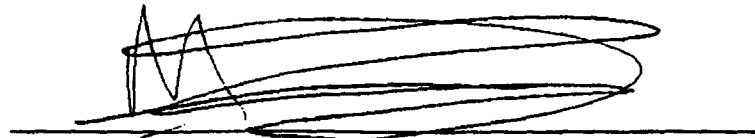
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Howard Cohn are jointly and severally liable and shall pay to Claimant Kathy Garver \$1,200.00 in actual damages.
2. The Claimant's request for interest is denied.
3. The parties shall bear their respective costs.
4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Kathy Garver, shall be retained by the NASD, Inc. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Howard Cohn are jointly and severally liable and shall pay \$50.00 to the Claimant as reimbursement.

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AFFIRMATION

I, MARC DAVID FREED, 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:

February 22, 1995