

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant/Counter-Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

94-00844

Name of Respondents/Counter-Claimants

Apostolos Sotirades and Constantine Sotirades

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REPRESENTATION

For Claimant/Counter-Respondent: Merrill Lynch, Pierce, Fenner and Smith, Inc. ("Merrill Lynch") was represented by Kathy Patrick, Esq. and Barrett H. Reasoner, Esq. of Gibbs & Bruns, L.L.P., located in Houston, Texas.

For Respondents/Counter-Claimants: Apostolos Sotirades and Constantine Sotirades ("Sotirades") were represented by Joana Tagaropulos, Esq., of the Law Offices of I.M. Tagaropulos, P.C., located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed: March 7, 1994.  
Claimant/Counter-Respondent's Submission Agreement signed on: March 16, 1994 by Mary K. Kirkpatrick, Administrative Manager, South Houston Complex of Merrill Lynch, Pierce, Fenner and Smith, Inc.

Statement of Answer and Counterclaim filed by Respondents/Counter-Claimants on: April 25, 1994.  
Respondents' Submission Agreement signed on: April 25, 1994.  
Merrill Lynch's Response to the Counterclaim filed: May 6, 1994.

Sotirades' First Amended Answer and Counterclaim filed: August 22, 1994.  
Merrill Lynch's Response to the First Amended Answer and Counterclaim filed: August 29, 1994.

HEARING INFORMATION

Pre-Hearing Conference: None Held.  
Hearing Dates/Sessions: November 14, 1994 for Two (2) sessions;  
November 15, 1994 for Two (2) sessions;  
November 16, 1994 for One (1) session.

Hearing Location: Houston, Texas.

CASE SUMMARY

Merrill Lynch alleged that the Sotirades deposited in two Merrill Lynch accounts monies that the Sotirades obtained from First City National Bank of Houston ("First City") in error and which did not rightfully belong to them. After Merrill Lynch was alerted by the bank in January 1992, it filed an interpleader action in state court because Merrill Lynch reasonably believed that it was subject to conflicting claims to the ownership of the money. Apostolos Sotirades resolved the matter between the bank and the Sotirades by paying back all the proceeds to the bank which had not been spent. However, the Sotirades filed a counterclaim, alleging that Merrill Lynch divulged confidential information and acted improperly by interpleading the money. The state court entered an order compelling the parties to arbitration based upon the arbitration agreement between the parties and Merrill Lynch requested entry of a declaratory judgment that there handling of the account was proper.

The Sotirades denied the material allegations of the Statement of Claim, asserting that:

1. Apostolos Sotirades opened an account with Merrill Lynch in 1990 which was used for making payments to the Internal Revenue Service and payments on the credit card issued through Merrill Lynch;
2. On or about November 21, 1992, Apostolos Sotirades deposited into his account the sum of \$289,159.00 by cashier's check drawn on First City payable to Apostolos Sotirades. On December 19, 1991, Apostolos Sotirades opened a second account with Constantine Sotirades using some funds from the second

account;

3. On January 13, 1992, a senior vice president of First City called Roger

Kinghorn ("Kinghorn"), Vice President of Merrill Lynch and discussed the

Sotirades accounts. Kinghorn provided information regarding the accounts,

including the balances in the accounts and the existence of the second account;

4. At the request of the bank, Merrill Lynch froze the Sotirades accounts on

January 13, 1992. The bank agreed to indemnify Merrill Lynch for any damages

which might occur due to the freezing of the accounts; N.A.S.D. Arbitration No. 94-00844

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5. The Sotirades were not immediately informed of the action taken by

Merrill Lynch and nobody contacted Sotirades to verify the allegations prior to

freezing the accounts. On January 14, 1992, Apostolos Sotirades contacted

Kinghorn and protested the freezing of the accounts and the breach of

confidentiality. Kinghorn informed Sotirades that the legal documentation was

on its way and that the funds were frozen because these were "not good funds;"

6. On January 16, 1992, Merrill Lynch filed the interpleader. Subsequent

to the filing, Merrill Lynch withdrew funds from the Sotirades' accounts to pay

credit card charges and management fees to Merrill Lynch;

7. As a result of the freezing of the accounts, Apostolos Sotirades was unable

to pay the Internal Revenue Service and he was forced to file Chapter 13

bankruptcy to seek protection from the Internal Revenue Service. Certain

creditors and a client of Sotirades became irate and informed other clients of the

bankruptcy. As a result of the unfavorable publicity, Sotirades lost several clients

and prospective business, and both the Sotirades suffered damage to their reputations.

Based upon the above allegations, the Sotirades asserted counterclaims against Merrill Lynch for

breach of contract; breach of fiduciary duty; conversion; violation of the Texas Deceptive Trade Practices Act; fraud and constructive fraud; slander and libel; professional malpractice; failure to follow its own guidelines and policies; and violation of the Sotirades' constitutional right to privacy and right to financial privacy.

Merrill Lynch denied the material allegations of the Sotirades' counterclaim.

#### RELIEF REQUESTED

Claimant/Counter-Respondent Merrill Lynch requested entry of an award declaring that it has no liability to Respondents/Counter-Claimants in connection with the handling of their Merrill Lynch accounts and reasonable attorneys' fees and costs pursuant to Sec. 37.009 of the Texas Civil Practice and Remedies Code. In addition, Merrill Lynch requested that Respondents take nothing by their counterclaim and that it receive its attorneys' fees and costs incurred in defending this claim.

The Sotirades requested entry of an award against Merrill Lynch in a sum in excess of \$3,000,000.00 as a result of the loss of funds, damage to credit, lost of clients, slander and mental anguish, and invasion of the right to privacy; Pre-judgment and post judgment interest; treble damages pursuant to the Texas Deceptive Trade Practices Act; punitive damages for breach of fiduciary duty, constructive breach of fiduciary duty and/or breach of the duty of good faith and fair dealing, and invasion of the right to privacy; attorneys' fees and costs pursuant to the Texas Deceptive Trade Practices Act and pursuant to Texas case law for cases involving

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fraud, breach of fiduciary duty, and as part of punitive damages; and for such further relief that the Sotirades were entitled to in law and equity.

#### 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. The declaratory relief requested by Claimant/Counter-Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. is hereby granted and the Panel specifically finds that:

a. Merrill Lynch, Pierce, Fenner and Smith, Inc. acted properly in its decision to file an interpleader action and tender the amounts in account numbers 317-22427 and 317-24552 to the 189th District Court;

b. Merrill Lynch, Pierce, Fenner and Smith, Inc. did not breach any duty of confidentiality to the Sotirades; and,

c. Merrill Lynch, Pierce, Fenner and Smith, Inc. has no liability to the Sotirades in connection with Merrill Lynch's handling of account numbers 317-22427 and 317-24552;

2. The counterclaims filed by Respondents/Counter-Claimants Apostolos Sotirades and Constantine Sotirades, including the claims for punitive and treble damages, are hereby dismissed with prejudice and denied in their entirety;

3. Respondent/Counter-Claimant Apostolos Sotirades is liable for and shall pay to Claimant/Counter-Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. the sum of \$9,000.00 as attorneys' fees. In deciding to award attorneys' fees to Merrill Lynch, the Panel considered the arguments of the parties and the Texas Civil Practice and Remedies Code, Sec. 37.009 and Sec. 38.001, et seq., and determined that authority existed for an award of attorneys' fees to Merrill Lynch;

4. Any additional costs of arbitration, including

additional attorneys' fees, shall

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be borne by the party incurring the cost;

5. All remaining claims against  
Respondent/Counter-Claimant Constantine  
Sotirades are dismissed with prejudice and denied in their  
entirety; and

6. 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: Five (5) hearing sessions x \$1,500.00 per session =  
\$7,500.00.

The National Association of Securities Dealers, Inc. shall retain  
the \$500.00 filing fee and the  
\$750.00 hearing session deposit previously deposited by the  
Claimant/Respondent Merrill Lynch,  
Pierce, Fenner and Smith, Inc. In addition, the NASD shall  
retain the \$300.00 claim filing fee  
and the \$1,500.00 hearing session deposit previously deposited by  
the Respondents/Counter-  
Claimants Apostolos Sotirades and Constantine Sotirades.  
Respondent/Counter-Claimant  
Apostolos Sotirades is liable for and shall pay to  
Claimant/Counter-Respondent Merrill Lynch,  
Pierce, Fenner and Smith, Inc. the sum of \$1,250.00 as  
reimbursement of the claim filing fee  
and hearing session deposit paid to the NASD. In addition,  
Respondent/Counter-Claimant  
Apostolos Sotirades is liable for and shall pay to the NASD the  
sum of \$5,250.00 as forum fees.  
Fees are payable to the National Association of Securities  
Dealers, Inc.

Concurring Arbitrators' Signatures

NameDate

/s/ Russell E. Rains, Esq. February 23, 1995  
Russell E. Rains, Esq.  
Public Arbitrator  
Chairperson

/s/ Wayne J. Baxmann February 23, 1995  
Wayne J. Baxmann  
Public Arbitrator

/s/ Thomas A. Thornhill  
Thomas A. Thornhill  
Industry Arbitrator

February 23, 1995

For NASD Use Only

Date of Service of Award: March 1, 1995

The following Arbitrator(s) concur(s) with the award:

Wayne J. Baxmann

Thomas A. Thornhill, Jr.

Russell E. Rains, Esq.

The following Arbitrator(s) dissent(s) with the award:

none