

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Lee Zorne

NASD Arbitration
No. 94-01924

Name of Respondent(s)

Merrill Lynch, Pierce, Fenner & Smith, Inc.

REPRESENTATION

For Claimant: Lee Zorne, Esq., Beverly Hills, California

For Respondent: Maren E. Nelson, Esq., Morrison & Foerster, Los Angeles, California

CASE INFORMATION

Statement of Claim filed: November 4, 1994

Claimant's Submission Agreement signed: October 7, 1994

Statement of Answer filed by Respondent: December 21, 1994

Respondent's Submission Agreement signed: November 28, 1994

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): August 8, 1995 (two sessions)

Hearing Location:

Los Angeles, California

CASE SUMMARY

Claimant alleged that in 1987, he gave Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. (Merrill Lynch) and/or its agents, 15 bearer bonds for authentication, with consent solely to deposit the proceeds into Claimant's, then-existing, account and further alleged that Respondent and/or its agents, unilaterally and without notice, withdrew \$15,000.00 from Claimant's account and then informed Claimant that the bonds were stolen.

Respondent Merrill Lynch denied each and every allegation of wrongdoing made in Claimant's Statement of Claim and alleged that Merrill Lynch and its agents diligently discharged their professional responsibilities with respect to Claimant's account. Respondent further alleged that Claimant signed indemnity agreements dated April 27, 1988 and August 8, 1988 and that in those agreements, Claimant represented to Merrill Lynch that the bonds were not lost or stolen, and that Claimant would indemnify Merrill Lynch for any loss it incurred should that representation prove inaccurate. Respondent further alleged that after the subject bonds matured in November 1992, Respondent was notified that 15 of the bonds which had been delivered by Claimant, and credited to Claimant's account, were reported lost or stolen; that Merrill Lynch's account was charged by the Depository Trust Company and, in turn, Claimant's account was charged in accordance with his agreements to indemnify Merrill Lynch for any loss. Respondent also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested damages in the amount of \$24,000.00 plus punitive damages, attorney's fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the evidentiary hearing, Claimant dismissed, with prejudice, all claims against Robert Callaghan, Kerry Moy and John Curran.

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (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 Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to Claimant the sum of \$16,500.00.
2. Claimant's claim for punitive damages is denied.
3. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$400.00 hearing session deposit previously deposited by the Claimant. Forum fees are to be split between the parties and are calculated as follows:

Two hearing sessions @ \$400.00/session	=	\$800.00
Total fees assessed	=	\$800.00
Claimant's share (50%)	=	\$400.00
Credit for hearing deposit	=	\$400.00
Balance due	=	\$ 0.00
Merrill Lynch's share (50%)	=	\$400.00
Balance due	=	\$400.00

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

ARBITRATORS

Name Public / Industry

Frank R. Smith, Esq.
John E. Cummings
William C. Richardson

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signatures



Frank R. Smith, Esq.

John E. Cummings

William C. Richardson

Date of Decision: 9/11/95

Date Served: 9/14/95