

N.A.S.D. REGULATION, INC., DISPUTE RESOLUTION
ARBITRATION AWARD

In the Matter of the Arbitration Between

Name of Claimants

Charles A. Rey;
Rey Marketing, Inc.

95-01075

Name of Respondent

Merrill Lynch, Pierce Fenner & Smith, Inc.

REPRESENTATION

For Claimants: Charles A. Rey and Rey Marketing, Inc. ("Rey") were represented by R. Steven Polachek, Esq., located in Barrington, Illinois.

For Respondent: Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") was represented by Stephen F. Boulton, Esq. of Cantwell & Cantwell, located in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: March 2, 1995.

Claimants' Submission Agreement signed on: March 16, 1995 by Charles A. Rey, individually and as President of Rey Marketing, Inc.

Statement of Answer filed by Respondent on: October 6, 1995.

Respondent's Submission Agreement signed on: April 25, 1995.

Respondent's Motion to Dismiss filed on: May 29, 1996.

Claimants' Response filed on: June 2, 1996.

HEARING INFORMATION

Pre-Hearing Conference: None Held

Hearing Date/Sessions: June 25, 1996 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants alleged that Merrill Lynch had, without authorization, debited Mr. Rey's Merrill Lynch Cash Management Account the sum of \$3,067.85 and Rey Management's Working Capital Management Account the sum of \$129.77 for purchases of goods or services made with a credit card issued as part of the account.

Respondent denied the material allegations of the Statement of Claim, alleging that the sum charged to Mr. Rey's account was a proper charge for auto repair work which Mr. Rey admits he granted authorization and which was completed at his direction on his automobile. In addition, Merrill Lynch alleged that Rey Marketing's claim for \$129.77 must be reduced to \$51.57 for credits received and that the remaining charges were all authorized. Furthermore, Merrill Lynch asserted three affirmative defenses.

RELIEF REQUESTED

Claimants requested entry of an award against Merrill Lynch for Charles A. Rey for \$3,067.85 plus costs and for Rey Marketing, Inc. in the sum of \$129.77 plus costs.

Respondent requested that the panel deny the relief requested in the Statement of Claim in all respects and award the Respondent its reasonable attorneys fees and costs in defending this action.

OTHER ISSUES CONSIDERED & DECIDED

On June 24, 1996, the Arbitrator determined that decision on Respondent's Motion to Dismiss would be reserved until argument was heard at the hearing. After hearing the parties arguments at hearing, the Arbitrator determined that the Motion would be denied.

At hearing, Claimants withdrew Count II of the claim for the requested relief of \$129.77.

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with NASD Regulation, Inc., Dispute Resolution.

AWARD

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

1. The Statement of Claim filed by Claimants Charles A. Rey and Rey Marketing, Inc. is dismissed with prejudice and denied in its entirety;

2. Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc.'s request for attorneys' fees is denied;
3. All remaining costs of arbitration, including attorneys' fees, shall be borne by the party incurring the cost; and
4. Any relief not specifically awarded is hereby denied.

OTHER COSTS

NASD Regulation, Inc., Dispute Resolution shall retain the \$100.00 postponement fee previously paid by Claimants, Charles A. Rey and Rey Marketing, Inc. In addition, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to NASD Regulation, Inc., Dispute Resolution the sum of \$100.00 as the surcharge required pursuant to Section 45 of the NASD Code of Arbitration Procedure.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) hearing session x \$100.00 per session = \$100.00.

NASD Regulation, Inc. shall retain the \$50.00 non-refundable claim filing fee previously paid by the Claimants. In addition, NASD Regulation, Inc. shall retain the \$100.00 hearing session deposit previously deposited by the Claimants, Charles A. Rey and Rey Marketing, Inc., as forum fees.

Fees are payable to the NASD Regulation, Inc., Dispute Resolution.

Arbitrator's Signature

Name

Date

/s/ Herbert S. Channick, Esq.

August 14, 1996

Herbert S. Channick, Esq.

Public Arbitrator

For NASDR Use Only

Date of Decision: August 15, 1996