

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Genady P. Cherepanov

95-04882

Name of Respondents

Merrill, Lynch, Pierce, Fenner & Smith Inc.

Jose R. Figarola

Maria Figarola Arazoza

Beverly S. Black

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 16, 1996, Claimant Genady P. Cherepanov ("Claimant"), who appeared Pro Se, alleged that on October 3, 1994 Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") through its employee Respondent Maria Figarola Arazoza ("Arazoza") had him sign his name to open a margin account but did not inform him of the account's characteristics, specifically that money could be loaned through the account. Claimant further alleged that he is too poor to get involved in financial adventures and that his pre-retirement age requires that he have modest investment objectives. Claimant contended that Arazoza purchased shares of Latin America Fund ("LAF") in his margin account in November of 1994 without authorization. Claimant further contended that his transaction requests were to be in writing or in person and that Respondents violated this agreement. Claimant alleged that Respondent Jose R. Figarola was considered his broker and that Respondent Beverly S. Black, authorized an April 6, 1995 transaction for the purchase of Dragon Funds ("DF") which violated his request that all transactions be in writing or in person. Claimant further alleged that as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondents Merrill, Lynch, Pierce, Fenner & Smith Inc., Maria Figarola Arazoza, through their representative and in-house counsel, Christopher D. Cavuoti, Esq., maintained that Claimant is a professor of mathematics and that he opened a Cash Management Account and a Individual Retirement Account with Merrill in 1994. Respondents further maintained that Claimant discussed and agreed to purchase shares of LAF and DF for his accounts and told Respondents that he would transfer the funds and once received, the purchases should be made. Respondents contended that an error was made in crediting the purchases to the proper account but that the error was corrected and the Claimant was made whole. Respondents further contended that Claimant was sent confirmation slips and prospectuses for all three purchases and that a timely failure to object constitutes a ratification of the trades. Respondents maintained that as a result of the above, they should not be held liable.

### RELIEF REQUESTED

Claimant Genady P. Cherepanov, requested \$4,963.00 in actual damages plus \$3,000.00 in punitive damages.

Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc., and Maria Figarola Arazoza, Jose Figarola, and Beverly Black, requested that the claims of the Claimant be dismissed.

### OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator considered and reviewed all documentation submitted by the parties concerning the Respondents' Motion to Dismiss Respondents Beverly Black, and Jose Figarola, as they are not parties in interest. The arbitrator granted the motion.

### AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John B. Kelley, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 1, 1995, and by the Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc., on December 13, 1995, and by Jose R. Figarola, Maria Arazoza, and Beverly Black, on November 30, 1995.

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: The claims of the Claimant Genady P. Cherepanov, against Respondents Merrill, Lynch, Pierce, Fenner & Smith, Inc., and Maria Arazoza, are denied in their entirety.

2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Genady P. Cherepanov, shall be retained by the NASD, Inc.

### AFFIRMATION

I, JOHN B. KELLEY, ESQ., 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.

  
John B. Kelley, Esq.

DATE OF DECISION: March 20, 1996