

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Kamlesh Chopra,

Claimant,

v.

Case No. 96-03633

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

Respondent.

REPRESENTATION OF PARTIES

Claimant Kamlesh Chopra ("Claimant") was represented by Edward M. Olson, Esq. of Velardo, Sugameli & Olson, P.L.C. located in Troy, Michigan.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent" or "Merrill Lynch") was represented by Joycelyn E. McGeachy, Esq. of Merrill Lynch located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about August 19, 1996.

Claimant's Submission Agreement was signed on August 14, 1996.

Respondent's Statement of Answer was filed on or about November 13, 1996.

Respondent's Submission Agreement was signed on November 14, 1996 by John R. Cummings Vice President of Merrill Lynch.

HEARING INFORMATION

The telephonic pre-hearing conference was held on May 15, 1997 for one (1) session.

The hearing was held on July 23, 1997 for two (2) sessions, July 24, 1997 for two (2) sessions, and October 7, 1997 for one (1) session. The hearing was held in Southfield, Michigan.

CASE SUMMARY

In her Statement of Claim, Claimant alleged that she contacted Merrill Lynch to purchase 2,000 shares of an Initial Public Offering for Pixar Animation Studios ("Pixar") at \$22.00 per share. Claimant contended that her broker at Merrill Lynch did not follow her instructions and apparently attempted to place a buy order in the over-the-counter market. Claimant asserted that when she was informed that her buy order had not been filled, she directed that the buy order be canceled. Claimant alleged that she received two notices from Merrill Lynch stating that her order to buy 2,000 shares of Pixar was canceled. Claimant maintained that her account statements from Merrill Lynch did not reflect the cancellations, however, but reflected a journal entry indicating a "trade correction" confirming a buy of 2,000 shares of Pixar at \$46.50 per share. Claimant contended that she subsequently received a confirmation indicating that her order to purchase 2,000 shares of Pixar stock had been filed. Claimant asserted that she requested that Merrill Lynch correct her account records to reflect that the order had, in fact, been canceled. Claimant alleged that Merrill Lynch told her that her order was filed before the first order to cancel had been entered into the system and that no error occurred.

Respondent Merrill Lynch denied all liability to Claimant in its Statement of Answer. Respondent alleged that the Claimant entered a market order to purchase 2,000 shares of Pixar. Respondent contended that the Claimant subsequently contacted Merrill Lynch and changed her order, instructing Merrill Lynch to cancel the market order to buy 2,000 shares of Pixar and replaced it with a limit order to buy 1,000 shares of Pixar at \$40.00 - \$40.50 per share. Respondent maintained that it informed Claimant that her original buy order had been executed and that it was too late to cancel. Respondent alleged that a confirmation of this trade was generated and sent to the Claimant. Respondent contended that at no time was the Claimant unaware that she owned the Pixar stock. Respondent asserted that the Claimant wrongly seeks to recover damages resulting from her own deliberate decision to maintain a position in a stock that has steadily declined in value and was purchased on margin.

RELIEF REQUESTED

Claimant requested an award of damages in the amount of \$97,982.78, plus reasonable attorney's fees.

Respondent requested that the Statement of Claim be dismissed in its entirety with prejudice, as well as an award of its costs incurred in this action.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

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 purchase of 2,000 shares of Pixar stock is hereby rescinded. Claimant Kamlesh Chopra shall tender her interest in 2,000 shares of Pixar stock to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. no later than two (2) weeks from receipt of this award;
- (2) After receipt of the 2,000 shares of Pixar stock and not later than thirty (30) days from receipt of this award, Respondent Merrill Lynch shall pay to Claimant Kamlesh Chopra the sum of Eighty One Thousand Dollars and No Cents (\$81,000.00), which sum is inclusive of an award of attorney fees. The panel finds that an award of attorney fees is appropriate under Michigan law;
- (3) Claimant Kamlesh Chopra shall not be liable for any outstanding margin debit, or any other costs, resulting from the purchase of 2,000 shares of Pixar stock;
- (4) Claimant Kamlesh Chopra's request for an award of punitive damages is hereby denied with prejudice; and
- (5) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically addressed and enumerated are hereby dismissed in their entirety with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session. There was one (1) pre-hearing session x \$300 = \$300 in forum fees. There were five (5) hearing sessions x \$500 = \$2,500 in forum fees. Total forum fees = \$2,800. Pursuant to §10332(b) of the NASD Code of Arbitration Procedure ("Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall refund the hearing session deposit in the amount of \$500 previously deposited by the Claimant. Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain Respondent Merrill Lynch's member surcharge in the amount of \$300.

Pursuant to §10332(c) of the Code, Respondent Merrill Lynch is liable for and shall pay all forum fees incurred in this matter which is the sum of \$2,800.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signature

/s/ Marc E. Thomas, Esq.

Marc E. Thomas, Esq.

Chairperson

Public Arbitrator

October 9, 1997

Dated:

/s/ Benjamin A. Kerner, Esq.

Benjamin A. Kerner, Esq.

Panelist

Public Arbitrator

October 9, 1997

Dated:

/s/ John G. Martin

John G. Martin

Panelist

Industry Arbitrator

October 12, 1997

Dated:

For NASD Regulation use only:

Date award served on the parties: October 14, 1997