

N.A.S.D. ARBITRATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Robert Wilder

96-04352

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc

CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on September 30, 1996, claimant Robert Wilder ("claimant"), who appeared Pro Se, alleged that respondent Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch") wrongfully dispersed funds from his CMA account. Claimant further alleged that on December 4, 1991, he opened a Cash Management Account agreement ("CMA") with Merrill Lynch, wherein they issued him checks, a Visa debit card, and set up an investment portfolio. Claimant also alleged that the debit card was never activated or used by him. Claimant asserted that on or about November 21, 1995, he was contacted by Tom Lawson ("Lawson") his account representative at Merrill Lynch, who informed him that a number of charges were being made on his debit card in California and other states. Claimant further asserted that he immediately told Lawson to cancel the card, because these transaction were unauthorized and constituted fraud by the user. Claimant also asserted that no other person was authorized to access funds in his CMA account, unless there had been written authorization for him for that person. Claimant contended that on or about November 25, 1996, Lawson contacted him again stating that nearly all the funds in the CMA account had been withdrawn.

Claimant further contended that he found out that his ex-wife had been using his debit card in various places. Claimant also contended that he had been divorced from his ex-wife on May 17, 1990 and that she had no community interest in the CMA account, nor did she have written authorization to use the CMA account. Claimant alleged that his ex-wife contacted Merrill Lynch stating that he had authorized her to remove the funds from his CMA account by using the Visa card, and signed a notarized statement to this regard. Claimant further alleged that pursuant to the account agreement only authorized persons could utilized the funds in the account and the liability for unauthorized use of the Visa card was limited to \$50,000.00. Claimant also alleged that Lawson informed him that the since the card was a debit card, there was nothing Merrill Lynch could do with regard to retrieving the funds or reinstating the funds into his account.

Respondent Merrill Lynch through its representative and in-house counsel Christopher D. Cavuoti, Esq., maintained on or about December 1991, claimant opened a CMA account and at his request he was issued a CMA Visa debit card. Respondent further maintained that claimant's ex-wife had sworn that her 94 purchases were authorized by claimant and that his allegation to the contrary are part of a bitter custody dispute. Respondent also maintained that throughout the period in question claimant received monthly account statements that listed his Visa activity. Respondent contended that claimant did not inform

Merrill Lynch that an alleged unauthorized individual was using his Visa card for four months. Respondent also contended that claimant was required under the Visa agreement to notify Merrill Lynch within a reasonable time if someone else was using his card without his authorization. Respondent also contended that claimant's statement that he had never used the card is inaccurate, because claimant had used the card on 19 occasions from June 26, 1992 through February 10, 1994. Respondents maintained that they cannot control vendors who accept the Visa card and that the vendors are responsible for determining that the Visa card presenter is the person named on the Visa card. Respondent further maintained that there is no basis in law or in fact for claimant's position.

RELIEF REQUESTED

Claimant Robert Wilder requested \$6,047.62 in damages.

Respondent Merrill Lynch requested that the claims of claimant be dismissed in their entirety.

AWARD

Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, William Newsome, Esq. was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimant Robert Wilder on September 27, 1996 and by respondent Merrill Lynch on November 21, 1996.

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:

1. Respondent Merrill Lynch be and hereby is liable and shall pay claimant the sum of \$2,031.05 in actual damages.
2. Respondent Merrill Lynch be and hereby is liable and shall pay claimant the sum of \$118.47, which is interest at the rate of 5% per annum from November 1995 to January 1997.
3. The \$150.00 filing fee previously deposited with National Association of Securities Dealers, Regulation, Inc. by claimant shall be retained by the NASDR, Inc. Respondent Merrill Lynch be and hereby is liable and shall pay claimant Robert Wilder the sum of \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, William Newsome, Esq., do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


William R. Newsome, Esq.

Date of Decision: March 7, 1997