

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Ravinder Sawhney

vs

Case No.
96-04699

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

vs

Third-Party Respondents

Prudential Securities, Inc.
Saranleen Sawhney

REPRESENTATION

For Claimant Ravinder Sawhney ("Claimant") appeared David E. Robbins, Esq., of the law office Kaufmann, Feiner, Yamin, Gildin & Robbins located in New York, New York.

For Respondent Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") appeared John C. Marcolini, Esq., of the law office Weiner Lesniak located in Parsippany, New Jersey.

For Third-Party Respondent Prudential Securities, Inc. ("Prudential") appeared Chavie N. Kahn, Esq., in house counsel at Prudential Securities, Inc.

For Third-Party Respondent Saranleen Sawhney ("S. Sawhney") appeared David E. Robbins, Esq., of the law office Kaufmann, Feiner, Yamin, Gildin & Robbin located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on October 21, 1996.

Claimant's Response to Merrill Lynch's Counterclaim was filed on January 20, 1997.

Claimant's Submission Agreement was signed on October 15, 1996.

Merrill Lynch's Statement of Answer, Counterclaim, and Third-Party Claim was filed on December 24, 1996.

Merrill Lynch's Submission Agreement was signed on December 2, 1996.

Prudential's Statement of Answer to the Third-Party Claim was filed on January 31, 1997. Prudential's Submission Agreement was signed on January 31, 1997.

S. Sawhney did not file a Statement of Answer to the Third-Party Claim or a signed Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions:

March 26, 1998

Two Sessions

The hearing was conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant initiated this arbitration claim to have the arbitration panel declare that he owes his executing broker, Merrill Lynch, a \$4,740.00 debit balance and not \$33,275.00 as Merrill Lynch contended.

Claimant alleged that on September 22, 1995, he entered several orders, including an order to purchase and sell by the close of business 4,000 shares of Micron Technology ("Micron") stock. Claimant maintained that he frequently gave same day closing orders without any problems. Claimant also alleged that Micron opened at 86 7/8 and closed at 85 3/4, leaving a \$4,740.00 debit balance, for which he admits liability. Claimant further alleged that on September 29, 1995, his Merrill Lynch broker told him that the sell order of the 4,000 Micron shares had not been executed.

Claimant contends that Merrill Lynch did not sell the shares until October 2, 1995, causing a debit balance of \$33,725.00, rejected Claimant's \$4,740.00 debit balance payment, and commenced an action in New Jersey Superior Court contrary to the parties' arbitration agreement.

Merrill Lynch asserted that on September 22, 1995, Claimant placed three buy orders for 2,200 shares of Intel Corporation, 2,200 shares of Microsoft Corporation, and 4,000 shares of Micron stocks. Merrill Lynch also asserted that Claimant later placed a stop order on the Micron stocks, but removed the stop order that day. Merrill Lynch stated that it executed Claimant's orders, purchasing 4,000 Micron shares at 86 7/8 per share.

Merrill Lynch contended that when it delivered all of the stocks purchased to Claimant's prime broker, Prudential, Prudential accepted and paid for all other positions, but reneged on its agreement to accept and pay for the Micron shares. Merrill Lynch contended that its personnel made several attempts to contact Claimant, who failed to return their calls. Merrill Lynch stated that on October 2, 1995, it liquidated the Micron positions leaving a debit balance of \$33,275.00. Merrill Lynch further contended that Claimant failed to pay the debit balance.

Merrill Lynch also contended that Claimant's trading history with Merrill Lynch does not show that Claimant frequently placed same day closing orders for the same security.

Prudential denied liability to Merrill Lynch and maintained that Claimant did not instruct Prudential to clear the Micron transaction. Prudential also maintained that it is only obligated to pay Merrill Lynch for effecting transactions as the executing broker if it has received proper written instructions from the prime brokerage client, Claimant. Prudential asserted that because Claimant did not instruct it to accept the shares of Micron, Prudential returned the shares twice to Merrill Lynch with the notation that it did not know the trade, and that there were no instructions from the client, Claimant, acknowledging the trade. Prudential contended that when it failed to settle the trade, Claimant was responsible to settle the trade.

RELIEF REQUESTED

Claimant requested that the panel declare that he owes Merrill Lynch \$4,740.00, without interest, and that it order Merrill Lynch to pay the costs of this arbitration.

Merrill Lynch requested that the Statement of Claim be denied in its entirety. In addition, Merrill Lynch requested an award against Claimant, Prudential, and S. Sawhney, jointly and severally, for \$33,275.00, plus interest, attorneys' fees, and costs.

Prudential requested that the Third-Party Claim be dismissed in its entirety and a declaration that it is not liable in any respect to Merrill Lynch, and for such further and other relief as the panel deems appropriate.

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 remains on file with the NASD.

Prior to the hearings, Merrill Lynch reached a settlement with Prudential and withdrew its claims against Prudential. Prudential did not appear at the hearing.

Claimant made a motion for the waiver of the fee for the postponement of the May 22, 1997 hearing, which the panel granted.

The panel made the following determinations concerning S. Sawhney, who did not file a Statement of Answer or a Submission Agreement in this matter:

1. Pursuant to Rule 10101 of the *Code of Arbitration Procedure* (the "Code"), the panel found subject matter jurisdiction over this entire controversy.

2. The panel found that S. Sawhney was a customer with a member of the NASD at the time the controversy arose. Accordingly, the panel found personal jurisdiction over S. Sawhney pursuant to Rules 10201 and 10301 of the *Code*.
3. The panel found that S. Sawhney was required to file a Statement of Answer and a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the *Code*. In this regard, the panel found that the Statement of Claim was properly served upon S. Sawhney pursuant to Rule 10314(a) of the *Code*.
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the *Code*, the panel found that NASD Regulation provided S. Sawhney with "due notice" of the hearing conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing.

AWARD

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

1. Claimant's claim is granted to the extent that Claimant does not owe Merrill Lynch any funds.
2. Merrill Lynch's counterclaim and third-party claim are hereby denied.
3. All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the *Code*, the arbitrators have determined that Claimant owes \$250.00 in non-refundable filing fees; that Claimant paid \$50.00; and that Claimant owes a balance of \$200.00. The arbitrators have also determined that NASD will retain the \$500.00 non-refundable filing fee and \$100.00 member surcharge deposited by Merrill Lynch, and have assessed the following Forum Fees:

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|-------------------------------|---|------------|
| 2 Hearing sessions x \$600.00 | = | \$1,200.00 |
| Total Forum Fees | = | \$1,200.00 |

1. Claimant is liable and shall pay the sum of \$600.00, representing one-half of the total forum fees assessed. Claimant previously deposited \$100.00 with the NASD, and owes a balance of \$500.00. Therefore Claimant owes a total of \$700.00.


2. Merrill Lynch is liable for and shall pay the sum of \$600.00, representing one-half of the total forum fees assessed, which Merrill Lynch previously paid.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

| | | |
|-----------------------------|---|---------------------|
| Marguerite B. Filson, Esq. | - | Public Chairperson |
| Fred S. Pieroni | - | Public Arbitrator |
| Virginia Kali Sourlis, Esq. | - | Industry Arbitrator |

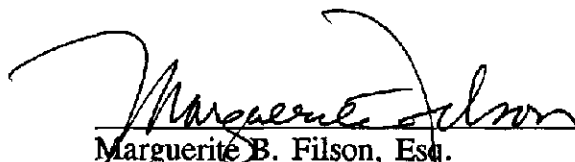
CONCURRING ARBITRATOR'S SIGNATURE



Marguerite B. Filson, Esq.
Chairperson - Public Arbitrator

Date of decision: May 6, 1998

I, Marguerite B. Filson, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Marguerite B. Filson, Esq.

ARBITRATION PANEL

| | |
|-------------------------------|---------------------|
| Marguerite B. Filson, Esq. - | Public Chairperson |
| Fred S. Pieroni - | Public Arbitrator |
| Virginia Kali Sourlis, Esq. - | Industry Arbitrator |

CONCURRING ARBITRATOR'S SIGNATURE

Fred S. Pieroni

Fred S. Pieroni
Public Arbitrator

Date of decision: May 6, 1998

I, **Fred S. Pieroni**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Fred S. Pieroni

Fred S. Pieroni

ARBITRATION PANEL

| | | |
|-----------------------------|---|---------------------|
| Marguerite B. Filson, Esq. | - | Public Chairperson |
| Fred S. Pieroni | - | Public Arbitrator |
| Virginia Kali Sourlis, Esq. | - | Industry Arbitrator |

CONCURRING ARBITRATOR'S SIGNATURE


Virginia Kali Sourlis, Esq.
Industry Arbitrator

Date of decision: May 6, 1998

I, Virginia Kali Sourlis, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Virginia Kali Sourlis, Esq.