

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

H. Greene & Company Profit Sharing Plan

Claimant,

v.

98-00031

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Respondent.

REPRESENTATION OF PARTIES

Claimant H. Greene & Company Profit Sharing Plan ("Green") was represented by Paul D. Frenz, Esq. of McBride, Baker & Coles located in Chicago, Illinois.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") was represented by Todd Zuckerbrod, Esq. corporate counsel for Merrill Lynch, Pierce, Fenner & Smith, Inc. located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about January 6, 1998. Submission Agreement of Claimant was signed on January 29, 1998.

Statement of Answer was filed by Respondent Merrill Lynch on or about April 3, 1998. Submission Agreement of Respondent Merrill was signed on March 31, 1998.

HEARING INFORMATION

A pre-hearing conference was held on August 27, 1998.

The hearing was held on June 3, 1999 in Chicago for a total of two (2) sessions.

CASE SUMMARY

Claimant Greene established a Merrill Lynch CMA Profit Sharing Plan ("the Plan") with Respondent Merrill Lynch designated as the H. Greene & Company Profit Sharing Plan. Based on a Certificate of Designation of Trustees document, Howard S. Greene was the sole trustee of

the Plan and, also, the only person with authority to receive and distribute funds and sign checks under the Plan. Claimant alleged that Ms. Toni Burdick, an H. Green & Company employee, sent a memo, dated June 13, 1996, to the Merrill Lynch office requesting a \$50,000.00 transfer from the Plan.

On July 29, 1996, an authorization for the issuance of a check was delivered to Respondent Merrill Lynch requesting that a check in the amount of \$4,567.37 be issued to accomplish a rollover for an H. Greene & Company employee, Nils Budne. Mr. Greene signed this authorization with no writings on the document below his signature. Before the form was submitted to Merrill Lynch, a typewritten addition was placed on the bottom of this authorization by Ms. Burdick requesting a \$50,000.00 transfer from the Plan into a Harris Bank Winnetka account.

The \$50,000.00 was transferred by Merrill Lynch to the Harris Bank account on June 14, 1996. The transfer was allegedly orchestrated by Ms. Burdick to cover funds she had improperly withdrawn from the account to cover checks she had cashed on which she had forged Mr. Greene's signature. Claimant Greene alleged that at no time during the transaction was Mr. Greene contacted directly by Merrill Lynch for his verbal or written approval of the \$50,000.00 transfer.

Respondent Merrill Lynch admitted at hearing that they had participated in an unauthorized transaction. Respondent Merrill Lynch contended that Mr. Greene's conduct, his lack of supervision of Ms. Burdick, allowed the alleged theft of funds by her. Respondent Merrill Lynch did nothing more than execute a wire transfer between Claimant Greene's two accounts. Mr. Greene had previously stated to Respondent that Ms. Burdick was in charge of the account with Respondent Merrill Lynch. Ms. Burdick had previously requested disbursements for Claimant Greene and provided authorization for those transactions. Based on Claimant Greene's established pattern on doing business with Respondent Merrill Lynch, Respondent reasonably concluded that Ms. Burdick had authority to act on Claimant Greene's behalf in requesting a transfer of funds between Claimant Greene's bank accounts.

RELIEF REQUESTED

Claimant Greene requested an award for compensatory damages in the amount of \$50,000.00. It also requested an award for interest and that it be assessed by the arbitration panel.

Respondents requested that the claim asserted against them be denied in its entirety.

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 originals remain on file with the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD").

AWARD

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

1. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall be and hereby is liable to Claimant H. Greene & Company Profit Sharing Plan the sum of \$30,000.00 as compensatory damages;
2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall be and hereby is liable to Claimant H. Greene & Company Profit Sharing Plan the sum \$5,730.48 as interest for the period between June 1996 and June 1999, and;
3. All other request for relief are hereby denied in their entirety.

FORUM FEES

Forum fees are calculated at the rate of \$400.00 per hearing session and \$300.00 for each pre-hearing conference, if any. There were two (2) sessions x \$400.00 = \$800.00 in forum fees. There was one (1) PreHearing Conference x \$300.00. Total forum fees equal \$1,100.00 (\$800.00 + \$300.00). Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "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. The panel has determined that the parties will split the forum fees equally. Each party is responsible for \$650.00 of the forum fees.

Pursuant to Rule 10332(c) of the Code, the NASD shall retain the non-refundable filing fee in the amount of \$120.00 and shall retain as forum fees the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant Greene. Claimant Greene will be invoiced \$150.00, the balance of the forum fees due by it. The NASD shall retain \$650.00 of the \$1000.00 Hearing Process Fee previously posted by Respondent Merrill Lynch. The balance of \$350.00 will be refunded to Respondent Merrill Lynch.

OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent Merrill Lynch has paid to the NASD the member surcharge in the amount of \$800.00 previously invoiced. Pursuant to Rule 10333 of the Code, Respondent Merrill Lynch has paid to the NASD the process fees in the total amount of \$600.00 previously invoiced. The NASD shall retain postponement fees in the amount of \$400.00 previously deposited by Respondent Merrill Lynch. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Stephen J. Nagy
Stephen James Nagy, Esq.
Public Arbitrator, Presiding Chair

06-21-1999

/s/ Lee H. Goodman
Lee H. Goodman
Public Arbitrator

06-29-1999

/s/ Thomas Cavanagh
Thomas Cavanagh
Industry Arbitrator

06-19-1999

For NASD use only:
Parties Served on: 06-30-1999

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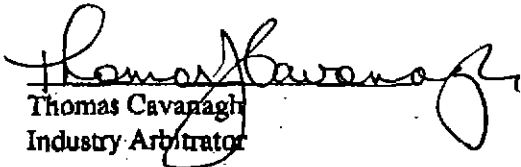
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Dated: _____

Stephen James Nagy, Esq.
Public Arbitrator, Presiding Chair

Lee H. Goodman
Public Arbitrator


Thomas Cavanagh
Industry Arbitrator

6-19-1989

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Stephen James Nagy, Esq.
Public Arbitrator, Presiding Chair



Lee H. Goodman
Public Arbitrator

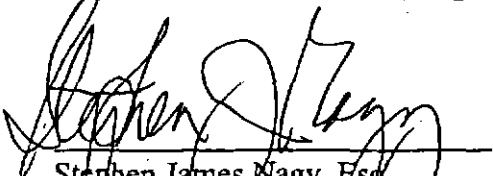
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Thomas Cavanagh
Industry Arbitrator

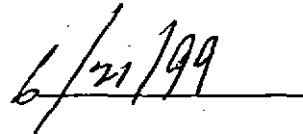
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Stephen James Nagy, Esq.
Public Arbitrator, Presiding Chair

Dated:


6/21/99

Lee H. Goodman
Public Arbitrator

Thomas Cavanagh
Industry Arbitrator

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