

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Steven A. Pollo,

Claimant.

v.

No. 98-00404

Merrill Lynch, Pierce, Fenner
& Smith, Inc.

Respondent.

REPRESENTATION OF PARTIES

Claimant Steven A. Pollo ("Claimant") was represented by Patrick R. Hogan, Esq. of Lasky Ficarek & Hogan located in Lansing, Michigan.

Respondent Merrill Lynch, Pierce, Fenner, & Smith, Inc. ("Merrill Lynch") was represented by William J. Manning, Jr., Esq. of Merrill Lynch located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about January 29, 1998.

Claimant's Submission Agreement was signed on January 28, 1998.

The Statement of Answer was filed on or about May 8, 1998.

Respondent's Submission Agreement was signed on May 7, 1998.

HEARING INFORMATION

The hearing was held on January 11, 1999 for two (2) sessions in Southfield, Michigan.

CASE SUMMARY

Claimant alleged that Respondent breached its fiduciary duty, contractual obligations, and otherwise acted negligently when it distributed Claimant's IRA funds pursuant to a distribution form bearing Claimant's signature. Claimant contended that the distribution form contained a forged signature, and the funds were ultimately disbursed to the individual who forged the distribution form. Claimant asserted that at no time prior to the issuance of the check did Respondent contact him and confirm in writing, verbally, or otherwise with him that the signature on the distribution form was authentic or that Claimant wished to make the withdrawal set forth in the distribution form.

Respondent denied all liability in the Statement of Claim. Respondent contended that it acted reasonably in distributing Claimant's IRA funds. Respondent asserted that it had no reason to know or believe that the signature on the distribution form was not the Claimant's signature. Respondent contended that the instructions on the distribution form were verified with Claimant after their receipt. Respondent maintained that the funds were sent directly to Claimant's residence via Cashier's Check payable to Claimant.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award of the following: compensatory damages in an amount in excess of \$42,000.00, punitive damages, as well as costs and attorney fees.

Respondent requested that the Statement of Claim be dismissed in its entirety with prejudice.

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) That the Statement of Claim is hereby dismissed in its entirety with prejudice;
- (2) That other than forum fees which are specified below, the parties shall each bear their own costs, attorney fees and expenses incurred in this matter; and
- (3) That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were two(2) hearing sessions x \$500 = \$1,000 in forum fees. Pursuant to Rule 10332(b) of 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.

Pursuant to Rule 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 retain as forum fees the hearing session deposit in the amount of \$500 previously deposited by the Claimant.

Pursuant to Rule 10332(c) of the Code, Respondent is liable for and shall pay forum fees in the amount of \$500 (1/2 forum fees).

OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Regulation, Inc. the \$1000 member surcharge and the \$2,100 member process fees previously invoiced.

Pursuant to Rule 10332(c) of the Code, Respondent is liable for and shall pay postponement fees in the amount of \$500.

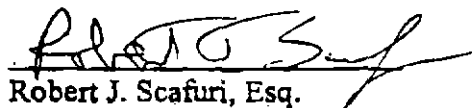
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NASD REGULATION

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 98-00404
Award Page 4 of 4

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

Concurring Arbitrators' Signatures:



Robert J. Scafuri, Esq.
Chairperson
Public Arbitrator

2/8/99
Dated:

Frederick L. Mirbach, Jr.
Panelist
Industry Arbitrator

Dated:

Mark Wietchy
Panelist
Industry Arbitrator

Dated:

For NASD Regulation use only:
Date award served on parties: _____


NASD Regulation, Inc. Office of Dispute Resolution
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Award Page 4 of 4

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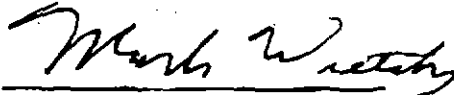
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