

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

A. L. Bruner

Claimant(s)

vs.

Merrill Lynch, Pierce, Fenner  
& Smith, Inc, Robert Gallo,  
and John J. Torrey

Respondent(s)

AWARD

CASE NO. 87-01537

SUMMARY OF ISSUES

This case was filed on \_\_\_\_\_

Claimant alleged that he was an uneducated investor with little or no experience in stock, bond, option, or other securities investing or trading and that he made investments through Merrill Lynch, Pierce, Fenner & Smith from late 1981 through approximately April 1984, at which time Claimant discovered that Respondents had engaged in a systematic series of actions intended to defraud Claimant, through the making of fraudulent omissions and/or misrepresentations, violations of Federal and California securities laws, and California statutes prohibiting unfair competition. Claimant also alleged that Merrill acted negligently and made negligent misrepresentations to Bruner, acted fraudulently, <sup>charged an account,</sup> and breached its fiduciary duty owed to Claimant. The allegations pertained to transactions in securities, bonds, a tax shelter, a limited

### DAMAGES AND RELIEF REQUESTED

Claimant alleged that he suffered general damages in the amount of \$763,141.18 as the result of Respondents' actions. Claimant also sought an award of punitive damages, together with an award of costs and attorneys' fees incurred as a result of pursuing this litigation. Respondents requested the denial of Claimant's claims and/or that no award in the amount alleged, or any other amount, be entered.

→ In his closing argument, Claimant's counsel requested an award of \$269,371 damages, \$23,359 in interest and \$100,000 for emotional distress.

and January 17, 1990

August 1 & 2, 1989, DAMAGES AND RELIEF AWARDED

On November 23 & 24, 1989 in San Francisco, California,  
the undersigned arbitrators heard the controversy in 10 sessions between  
the parties as set forth in submissions to arbitration signed by  
Claimant(s) on September 4, 1987, by Respondent Merrill  
Lynch, Pease, Lerner & Smith, Inc. on November 23,  
1987, by Respondent John Tapey on November 24, 1987,  
and by Respondent(s) Robert Pells on November 23, 1987.

The arbitration panel, having considered the pleadings, the testimony, and  
the evidence presented at the hearing, has determined in full and final  
resolution of the issues submitted for determination as follows:

1. ~~Each~~ Each and every claim of Claimant  
is dismissed.

2. The parties shall each bear their respective costs including attorneys' fees.

3. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure, <sup>a)</sup> the NASD shall retain/~~refund~~ the \$ 1,000 filing fee previously deposited by the Claimant, and b) Claimant is assessed from fees in the amount of \$9,000, to be paid directly to the National Association of Securities Dealers, Inc..

OTHER ISSUES

On January 10 and 12, 1990, Claimant and Respondents entered into a written stipulation whereby they stipulated that all claims based upon the Claimant's investment in Trilogy stock are dismissed with prejudice from the arbitration proceeding.

ARBITRATORS CONCURRING

DATE SERVED: January 18, 1990

Margaret Kallman  
Margaret Kallman

William H. LeRand  
William H. LeRand

Barbara Allen Brooks  
Barbara Allen Brooks

~~ARBITRATORS DISSENTING~~

Randall J. Miller  
Randall J. Miller  
Kenneth H. Sayer  
Kenneth H. Sayer