

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Keith and Katherine M. Keim

Claimants

and

C. Thomas Wahl and Merrill Lynch, Pierce,
Fenner and Smith

Respondents

A W A R D
87-01731

CASE SUMMARY

In a claim filed with the NASD on September 15, 1987, Claimants Keith and Katherine Keim ("the Keims") alleged that Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") and C. Thomas Wahl ("Wahl") purchased speculative and unsuitable LTV Corp. cumulative convertible Preferred Stock for the Keim's IRA accounts and Entex Energy Development for the Keim's joint account.

Merrill Lynch and Wahl denied the allegations of the claim and asserted various affirmative defenses including but not limited to estoppel, ratification, contributory negligence and failure to mitigate damages.

RELIEF REQUESTED

The Keim's requested damages of \$12,500 plus a gain on that money calculated with respect to the Standard & Poor's 500 index.

Merrill Lynch and Wahl requested dismissal of the claim and that the costs of the proceeding be assessed against the Keims.

AWARD

On Thursday and Friday, October 5 and 6, 1989 in St. Louis, Missouri, during a hearing lasting four sessions the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on September 10, 1987 by Claimants Keith and Katherine Keim, on November 24, 1987 by John R. Cummings on behalf of Respondent Merrill Lynch Pierce Fenner & Smith, Inc. and on November 20, 1987 by Respondent C. Thomas Wahl.

OTHER ISSUES

After the hearing and prior to the decision being rendered in this matter, Claimant's counsel requested that the record be supplemented with an affidavit of attorneys' fees. The panel considered the parties respective positions and decided not to reopen the hearing on this issue.

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

1. The Respondents Merrill Lynch and Wahl are liable for and shall pay to the Keims, jointly, the total sum of Eight Thousand Two Hundred Ninety Six Dollars and Sixty Nine Cents (\$8,296.69) which sum is apportioned as follows;

- a. Merrill Lynch is liable for and shall pay to the Keims, jointly, the sum of Four Thousand Nine Hundred Seventy Eight Dollars and One Cents (\$4,978.01);

b. Wahl is liable for and shall pay to the Keims, jointly the sum of Three Thousand Three Hundred Eighteen Dollars and Sixty Eight Cents (\$3,318.68);

2. No interest is awarded on the above stated sums;

3. The parties shall each bear their respective costs and expenses including any attorneys' fees incurred in this proceeding; and

4. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees the \$200.00 filing fee previously deposited with the NASD by the Claimants. The Claimants are assessed additional forum fees in the amount of \$600.00 which sum is payable to the NASD, and the Respondents are assessed jointly and severally the sum of \$800.00 as additional forum fees.

By the Panel

Dated: December 4, 1989

/S/ Harvey Yusman, Esq.
Presiding Chairman

Dated: December 6, 1989

/S/ Merle M. Sanguinet

Dated: December 4, 1989

/S/ Thomas C. Boersig Jr., Esq.