

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
KARIN SMITH,)
) Claimant,)
) Case #87-02574
vs.) Award
)
MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.)
and DANIEL K. MOORE)
) Respondents.)
)

Heard before the members of the Arbitration Panel:

William A. Fleck, Esq.
Mr. Andrew E. Baluk
Anthony S. Paetro, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on December 11, 1987. The hearing was conducted in Fort Lauderdale, Florida on October 12, 1989 and November 28, 1989 with a total of five (5) sessions.

Claimant Karin Smith ("Smith") alleged that Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Daniel K. Moore ("Moore") were liable for: violations of Florida Statute Section 517.301; breach of fiduciary duty; fraud and deceit; negligence and violations of Section 12(2) of the Securities and Exchange Act. Additionally, Claimant alleged that Merrill Lynch was liable for negligent supervision. Specifically, Claimant alleged that, due to the misrepresentations and omissions of Moore, she was induced into purchasing certain securities which were unsuitable for her stated investment objectives and that Respondents failed to inform her of all the risks involved. Respondents alleged that: Claimant's investment objectives included capital appreciation and therefore the securities were suitable; all the risks were disclosed to Claimant; the losses were due to market fluctuations and Smith's own decision based on the advice of her investment advisor; and purchases of securities on the secondary market are beyond the purview of a Section 12(2) claim.

RELIEF REQUESTED

Claimant requested damages in the amount of either \$22,491.20; \$30,376.06 or \$84,067.05 plus interest, punitive damages, attorney's fees and other costs. Respondents requested dismissal of the claim, attorney's fees and other costs.

AWARD

On October 12, 1989 and November 28, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on December 9, 1987, and by Respondents Merrill Lynch on October 12, 1989 and Moore on February 23, 1988. 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. 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, Inc.
2. Respondents are not liable, and, therefore, all claims against them are hereby dismissed.
3. Claimant's request for attorney's fees is hereby dismissed in all respects.
4. Respondents' request for attorney's fees is hereby dismissed in all respects.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Three Thousand Seven Hundred Fifty and 00/100 (\$3,750.00) Dollars (\$750 x 5 sessions). Respondents are hereby assessed forum fees in the amount of One Thousand Eight Hundred Seventy-Five and 00/100 (\$1,875.00) Dollars payable to the NASD, Inc. for which they shall be jointly and severally liable. Claimant is hereby assessed forum fees in the amount of One Thousand Eight Hundred Seventy-Five and 00/100 (\$1,875.00) Dollars payable to the NASD, Inc. The NASD, Inc. shall retain the Six Hundred and 00/100 (\$600.00) Dollar filing fee previously deposited by the Claimant with the NASD, Inc. in partial satisfaction of such forum fees.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

RELIEF REQUESTED

None.

ARBITRATORS CONCURRING

William A. Fleck, Esq.
Mr. Andrew E. Baluk
Anthony S. Paetro, Esq.

Dated: December 8, 1989