

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
JOSEPH and JO ANN MALLAMO SR.,)
)
) Claimants,)
) Case #87-02868
vs.) Award
)
)
MERRILL LYNCH, PIERCE, FENNER)
& SMITH, INC.,)
)
) Respondent.)
)

Heard before the members of the Arbitration Panel:

Jerome A. Pivnik, Esq.
Sidney M. Dubbin, Esq.
Thomas J. Boyle

CASE SUMMARY

This claim was filed with the NASD, Inc. on December 31, 1987. The hearing was conducted in Fort Lauderdale, Florida on October 19 and 25, 1989 with a total of four sessions.

Claimants Joseph and Jo Ann Mallamo ("Mallamo") alleged that Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. ("MLPFS") made excessive commission charges in their accounts; refused to recredit the discounts they were entitled to after promising to do so; made premature withdrawals from fund investments and reinvestments into other funds with the intent to generate commissions; and, made misrepresentations of material facts regarding the status of their accounts.

Respondent agreed that Claimants were entitled to certain commission discounts; alleged that it is in the process of paying those plus interest to Claimants; denied all allegations of wrongdoing; alleged that Respondent made full and fair disclosure of the nature of all investment charges and fees; that Claimants chose to liquidate their investments at an inopportune time against the advice of MLPFS.

RELIEF REQUESTED

Claimants requested damages in the amount of all overcharged commissions; needless commissions generated for the benefit of Respondent; punitive damages; attorney's fees and all costs of this arbitration. Respondent requested that the expert report of Messrs. Shahady and Gruber be stricken; dismissal of the claim; and costs.

AWARD

On October 19 and 25, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on March 29 and June 10, 1988, and by Respondent on February 7, 1989. 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. Respondent, MLPFS, shall not be liable to Claimants and all claims against it are hereby dismissed.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, Claimants are hereby assessed forum fees in the amount of Three Thousand and 00/100 (\$3,000.00) Dollars payable to the National Association of Securities Dealers, Inc. The NASD shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimant in partial satisfaction of such fees.
4. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

At the beginning of the hearing, Claimants agreed to strike the two expert reports attached to the Claim, and voluntarily withdrew their claims for both attorney's fees and punitive damages.

During the course of the hearing, the Respondent tendered a check for the uncontested commission discounts plus interest in the amount of Six Thousand Four Hundred Seventy Five and 30/100 (\$6,475.30) Dollars. Prior to the conclusion of the hearing, Claimants accepted said check.

ARBITRATORS CONCURRING

Jerome A. Pivnik Esq., Sidney M. Dubbin Esq. and Thomas J. Boyle

Received this 14th day of November 1989.