

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between :
:
Diane W. Harter : AWARD
:
Claimant : #88-00692
vs. :
:
Merrill Lynch, Pierce, Fenner & Smith, Inc. :
David A. Gingras :
Michael A. Ehrlich :
Respondents :

Case Summary

Claimant Diane W. Harter (hereinafter "Claimant") alleged that she was fraudulently induced to open an account at Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. (hereinafter "Merrill Lynch"). Claimant alleged that Respondents gave her false or misleading information in regards to her account. Claimant alleged that Respondents Merrill Lynch, David A. Gingras (hereinafter "Gingras") and Michael A. Ehrlich (hereinafter "Ehrlich") caused her to suffer losses in her account due to the reckless and negligent conduct of Respondents.

Claimant further alleged that Ehrlich and Merrill Lynch failed to properly supervise Gingras the registered representative responsible for Claimant's account. Claimant alleged that her account was subjected to unauthorized withdrawals by Gingras and/or other Merrill Lynch employees. Claimant alleged that her account had been debited, without authorization or compensation therefor, 200 shares of IBM stock.

Respondents, Merrill Lynch, Ehrlich and Gingras specifically denied the allegations asserted by Claimant in her claim and maintained that all transactions were made at the request of Claimant and/or other members of her family and were effectuated in response to those requests. Respondents further maintained that Claimant suffered no damages as a result of those transactions.

Relief Requested

Claimant requested damages of approximately \$30,000.00, plus interest and attorney's fees.

Respondents' requested that the panel dismiss Claimant's claim with costs including reasonable attorney's fees.

Award

On June 5 & 6; August 16, 17, 29 & 30; September 18 & 19, and October 17, 1989, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Diane W. Harter on February 17, 1988, and by Respondent David A. Gingras on May 13, 1988. Respondents Merrill Lynch and Ehrlich did not execute a Submission Agreement; however, both were represented by counsel at the hearing and both submitted an Answer to the claim. Pursuant to Section 12(a) of the Code of Arbitration Procedure, the arbitration panel exercised its jurisdiction over Respondents Merrill Lynch and Ehrlich. The initial claim was filed on March 1, 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. That Respondent Merrill Lynch is liable to the Claimant and shall pay to the Claimant the sum of Thirty Eight Thousand Five Hundred Eighty Five and 00/100 Dollars (\$38,585.00); inclusive of interest.
2. That the claims asserted against Respondents Ehrlich and Gingras are dismissed in their entirety.
3. The parties shall each bear their respective costs including attorney fees.

4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$400.00 filing fee previously deposited by the Claimant. _ _ _

CONCURRING ARBITRATORS

/s/
Walter A. Kapuscinski