

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between :
: George and Pauline Waters : AWARD *aw*
: Claimants : ~~aw~~
vs. : #88-00693
: Merrill Lynch, Pierce, Fenner & Smith, Inc. :
Michael Ehrlich :
David A. Gingras :
Respondents :

Case Summary

Claimants George and Pauline Waters (hereinafter "Claimants") alleged that they suffered losses due to the reckless and negligent conduct of Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. (hereinafter "Merrill Lynch"), Michael Ehrlich (hereinafter "Ehrlich") and David A. Gingras (hereinafter "Gingras"). Claimants alleged that the investment strategy employed by Gingras was excessive, unsuitable and unauthorized. Claimants alleged that Merrill Lynch and Ehrlich failed to adequately supervise Gingras. Claimants seek to recover from Merrill Lynch and Gingras for losses allegedly suffered by them due to Gingras' intentional fraudulent handling of the Claimants' accounts. Claimants alleged that their securities trading accounts were opened because of the fraudulent inducements and misrepresentation of Respondents Merrill Lynch and Gingras. George Waters alleged that he was compelled by fraud and deceit of Merrill Lynch to execute a general release in favor of Merrill Lynch and a promissory note to cover the losses which Gingras had run up. Claimants alleged that the losses in their accounts are the direct and proximate result of Gingras' activities. Mr. Waters alleged that the note and release executed by him are void and unenforceable.

Merrill Lynch and Ehrlich denied the allegations in the Statement of Claim that Claimant were fraudulently induced to open accounts at Merrill Lynch or were given any false or misleading information in connection with those accounts. Merrill Lynch and Ehrlich also denied the allegations in the Statement of Claim that they failed to supervise the conduct of Gingras, in connection with Claimants' accounts at Merrill Lynch. In addition, Merrill Lynch and Ehrlich denied that Gingras engaged in unauthorized, excessive, reckless or unsuitable trading in Claimants' accounts in violation of the rules of the National Association of Securities Dealers, Inc. or that Gingras made any misrepresentations or omissions to Claimants concerning the status of their accounts. Finally, Merrill Lynch denied that it compelled Mr. Waters to execute a release and a note in favor of Merrill Lynch by fraud, deceit or duress. Respondent Gingras has denied generally the allegations in the Statement of Claim.

Merrill Lynch asserted a counterclaim against Claimant George Waters alleging that this Claimant had reneged on and had breached his obligation under the settlement agreement. Merrill Lynch alleged that it is no longer bound to accept less than its losses and is entitled to the entire debit balance in Mr. Waters' account. In the alternative, Merrill Lynch maintained that the panel should enforce the contractual obligations of the parties.

Relief Requested

Claimants requested a declaration that the release and promissory note are void and unenforceable and actual damages of \$2,258,899.49; inclusive of interest, cost and attorneys' fees. Claimants also requested punitive damages as the arbitrators deemed appropriate.

Merrill Lynch requested that the panel dismiss Claimants' claim, that the panel award Merrill Lynch damages in the amount of \$997,180.43, including interest thereon from December 2, 1986. In the alternative Merrill Lynch requests that the panel enforce the contractual obligations of the parties and award Merrill Lynch the amount of \$250,000.00 representing the amount due under the note, plus interest thereon, as set forth in the note. Merrill Lynch requested that either form of relief be accompanied by an award to Merrill Lynch of the attorney's fees and costs it has incurred as a result of Claimants attempt to avoid their obligations.

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 Claimants George and Pauline Waters on February 18, 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 the 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 the state laws of New Jersey shall apply.
2. Respondents Merrill Lynch, Ehrlich and Gingras are jointly and severally liable and shall pay to the Claimant Pauline Waters the sum of Two Hundred Ninety-Four Thousand Six Hundred and Forty and 00/100 Dollars (\$294,640.00) in compensatory damages inclusive of interest and Four Hundred and One Thousand Three Hundred and Sixty and 00/100 Dollars (\$401,360.00) in punitive damages.
3. That Respondent Gingras is liable and shall pay to the Claimant George Waters the sum of Five Hundred Fifty Eight Thousand Eight Hundred and 00/100 Dollars (\$558,800.00); inclusive of interest.
4. That all claims asserted by George Waters against Merrill Lynch and Ehrlich are dismissed in their entirety.
5. That all counterclaims asserted by Merrill Lynch against the Claimant George Waters are dismissed in their entirety.
6. The parties shall each bear their respective costs including attorney fees.
7. Pursuant to Section 43 of the Code of Arbitration Procedure, forum fees shall be assessed against the Respondent Merrill Lynch, Ehrlich and Gingras jointly and severally in the amount of \$16,000.00. This shall cover forum fees for the double session hearings held June 5 & 6, August 16, 17, 29, & 30, and September 19, 1989 and for the triple session held September 18, 1989 and for the single session arbitration held on October 17, 1989.
8. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the Claimants' \$1,000.00 filing fee.

CONCURRING ARBITRATORS

/s/
Ira M. Starr

/s/
Walter A. Kapuscinski

/s/
Andrew Reegen

/s/
Michael J. Shalley

Dissents only as to paragraph
5 of the award and to the amount
awarded in paragraph 2, but
concurs with the panel's finding
of liability.

/s/
Andrew Brodsky

Dissents only as to paragraph 4.

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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



Ira M. Starr_____
Andrew Brodsky_____
Michael J. Shalley_____
Walter A. Kapuscinski_____
Andrew Reegen

4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$500.00 filing fee previously deposited by the Claimant.

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