

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Gerardo Joffe, individually and Claimant
on behalf of Priscilla Joffe,
Rachel Joffe, Joseph Joffe and
Michael Joffe

vs.

Merrill Lynch, Pierce, Fenner Respondent
& Smith, Inc.

AWARD

CASE NO. 88-00723

SUMMARY OF ISSUES

In a claim filed with the National Association of Securities Dealers, Inc. on March 4, 1988, Claimant alleged breach of contract, negligence and unauthorized sale and repurchase of 19,800 share of Time, Inc. common stock and improper debiting of his account. Specifically, Claimant Gerardo Joffe, individually and on behalf of Priscilla Joffe, Rachel Joffe, Joseph K. Joffe and Michael Joffe, alleges that he instructed his financial consultant at Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") to sell 19,800 shares of Time, Inc. if it fell to \$75.00 per share or less. Claimant alleges that Respondent's financial consultant erroneously sold the shares at \$77.00 per share, rather than the stop loss price of \$75.00 per share. Claimant alleges that he instructed Respondent to repurchase the shares immediately at \$77.00 per share. Claimant alleges that Respondent repurchased the shares at \$82.50 and improperly debited the account for \$116,267.44 representing the difference between the sale and repurchase price of the stock.

Respondent asserts that Claimants authorized the sale of Time Life at \$77.00 per share. Respondent alleges that it repurchased the Time Life shares as quickly as market conditions permitted.

DAMAGES AND RELIEF REQUESTED

Claimants request \$116,267.44, with interest from October 22, 1987, attorneys' fees pursuant to the Cash Management Account Agreement and costs, including filing fees. Respondent seeks dismissal of the claim and costs.

DAMAGES AND RELIEF AWARDED

On May 22 and 23, and June 29 and 30, 1989, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Gerardo Joffe, individually and on behalf of Priscilla Joffe, Rachel Joffe, Joseph K. Joffe and Michael Joffe, on February 29, 1988 and by Respondent on July 5, 1988. The hearing was held in San Francisco, California. The hearing consisted of eight hearing sessions. The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing and post-hearing submissions, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant the sum of Forty-Nine Thousand, Five Hundred Dollars and Zero Cents (\$49,500.00).
2. Respondent is liable for and shall pay to Claimant the sum of Eight Thousand, Six Hundred Sixty-Two Dollars and Zero Cents (\$8,662.00) representing interest.
3. Respondent shall pay to Claimant the sum of Twenty-Three Thousand, Six Hundred Dollars and Zero Cents (\$23,600.00) representing reasonable attorneys' fees and costs.
4. The claim for punitive damages is dismissed.
5. Respondent's request for costs is denied.
6. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure, the NASD shall refund the \$750.00 filing fee previously deposited by the Claimant. Respondent is assessed forum fees in the amount of \$6,000.00 payable to the NASD through its staff counsel.

OTHER ISSUES

After the hearing, the panel requested counsel to submit a post-hearing submission addressing whether or not the panel has the power to award

attorneys' fees pursuant to the Cash Management Account Agreement entitled Liability for Cost of Collection appended to the Statement of Claim.

PRESIDING ARBITRATORS

DATE SERVED: 09/28/89



Andrew James Carroll

Alton H. Kingman, Jr.

Fernando Garcia, Esq.