

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
THOMAS O. DURFEE and ELENA)
M. DEMAS f/k/a DURFEE,)
)
Claimants,)
)
vs.) Case #88-00872
) Award
)
FEDERICO ROA, ALAIN MUGGLER, JOHN GARRETT,)
ERNESTO GONZALEZ, MERRILL LYNCH, PIERCE,)
FENNER & SMITH, INC. and MERRILL LYNCH)
INTERNATIONAL & CO.,)
Respondents.)
)

Heard before the members of the Arbitration Panel:

William A. Calvo III, Esq.
Harold Alenick
Joseph Luby

CASE SUMMARY

This claim was filed with the NASD, Inc. on March 17, 1988. The hearing was conducted in Fort Lauderdale, Florida, with a total of four sessions. Claimants alleged that the Respondents improperly froze their account resulting in actual and consequential damages. Respondents maintained that they properly froze the account pursuant to the law of the State of New York; that Claimants' losses were the result of market action; and, that Claimants authorized all trading in the account. Respondents counter claimed against Thomas O. Durfee for any amounts for which they may be found liable to Elena M. de Durfee alleging that Thomas Durfee caused the decline in portfolio value by placing trades.

RELIEF REQUESTED

Claimants requested actual damages in the amount of \$84,166.80, consequential damages of \$100,000.00, punitive damages and costs. Respondents requested dismissal of all claims and costs and further, that, if they were found liable, Thomas Durfee be held liable for any amounts awarded to Elena M. de Durfee.

AWARD

On March 22 and 23, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on May 10, 1988; and by Respondents Federico Roa ("Roa") on August 11, 1988; Ernesto Gonzales ("Gonzalez") on September 9, 1988; Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Merrill Lynch International & Co. ("ML Int.") on September 19, 1988; and Alain Muggler ("Muggler") and John Garrett ("Garrett") on March 23, 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 original(s) remain on file with the NASD, Inc.
2. Respondents, Roa, Muggler, Garrett and Gonzalez, shall not be and hereby are not liable to the Claimants and, therefore, all claims against them shall be and hereby are dismissed.
3. Respondents, Merrill and ML Int., shall be and hereby are liable, jointly and severally, and shall pay to Claimants the amount of Fifty Nine Thousand Seven Hundred Forty Five and 60/100 (\$59,745.60) Dollars plus interest at the legal rate of 12% per annum in the amount of Eleven Thousand Three Hundred Fifty One and 64/100 (\$11,351.64) Dollars for a total of Seventy One Thousand Ninety Seven and 24/100 (\$71,097.24) Dollars.
4. Claimants' request for punitive damages shall be and hereby is dismissed in all respects.
5. Claimant/Counter Respondent, Thomas Durfee, shall not be and hereby is not liable to the Respondents/Counter Claimants and, therefore, all counter claims against him shall be and hereby are dismissed.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, Respondents Merrill and ML Int., shall be and hereby are assessed forum fees, jointly and severally, in the amount of Three Thousand and 00/100 (\$3,000.00) Dollars (four sessions times \$750.00), of which \$750.00 shall be paid directly to the Claimants and \$2,250.00 shall be paid to the NASD, Inc.
7. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorneys' fees.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

William A. Calvo III, Esq., Harold Alenick and Joseph Luby

Dated: June 26, 1989