

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Michigan Business Systems, Inc.

Claimants

and

Merrill Lynch Pierce Fenner & Smith, Inc.;
David F. Winkler

Respondents

A W A R D
88-1024

CASE SUMMARY

Michigan Business Machines, Inc. ("Claimant") alleged the following:

1. Merrill Lynch Pierce Fenner & Smith, Inc. and David F. Winkler (Merrill Lynch and Winkler are collectively referred to herein as "Respondents") failed to disclose and made misrepresentations regarding the risks of investing in the Met Life Mutual Fund ("Mutual Fund") and the commissions generated therefrom.

2. The Mutual Fund investment was unsuitable for the Claimant.

3. Respondents failed to provide a prospectus and disclose that Merrill Lynch was making a market in the securities or was acting as principal not an agent.

4. Merrill Lynch failed to properly supervise its employees including Winkler; and

5. Respondents violated federal and state securities laws and the Michigan Consumer Protection Act.

Respondents denied each allegation of the Claimant.

RELIEF REQUESTED

Claimant requested damages in an amount equal to the difference between the sums originally invested minus income received with statutory interest in an amount which exceeds \$15,000 dollars, plus its attorneys' fees and costs. Respondents requested that all of the claims of the Claimant be dismissed.

DAMAGES AND RELIEF AWARDED

On March 29, 1989 the Claimant filed his Statement of Claim against the Respondent. On August 9, 1989 in Southfield, Michigan, the undersigned arbitrators heard the controversy between the parties as set forth in the submissions to arbitration signed by John Spitzig on March 28, 1988 on behalf of the Claimant, by J. David Montague on July 13, 1988 on behalf of Merrill Lynch Pierce Fenner & Smith, Inc. and by David F. Winkler on July 28, 1989.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Each of the Claimants' claim against the Respondents are hereby dismissed;
2. Each party shall bear their own respective costs and attorneys' fees; and
3. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain as forum fees the \$400.00 filing fee previously deposited with the NASD by the Claimant.

By the Panel

Dated: August 29, 1989

/S/ Elbert C. Mackey, Esq.
Presiding Chairman

Dated: September 7, 1989

/S/ Marvin I. Horowitz, Esq.

Dated: August 25, 1989

/S/ Eugene F. Leich

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