

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Alberto Perez Cantu

Claimant(s)

vs.

Gilbert Castaneda, Peter Gerrity  
and  
Merrill, Lynch, Pierce, Fenner & Smith

Respondent(s)

AWARD

CASE #88-01169

SUMMARY OF ISSUES

This case was filed on April 12, 1988. Claimant, Alberto Perez Cantu, alleges that Respondent, Merrill Lynch, through its representatives Gilbert Castaneda and Peter Gerrity, caused claimant to suffer damages by inducing Claimant to transfer bank deposits into Merrill Lynch Accounts used, principally, to purchase GNMA Investments on leverage.

Claimant states that Respondents misrepresented the risks involved in said investments and did not take into consideration Claimant's needs or investment objectives.

Respondents allege that the loss suffered in Claimant's account was a result of a sudden unexpected and dramatic downturn in GNMA prices which occurred in mid-April 1987.

Respondent also contends that the investments were suitable and consistent with Claimant's stated investment objectives.

DAMAGES AND RELIEF REQUESTED

Claimant demands rescission for violation of California Civil Code Section 1632 or, in the alternative, reimbursement for losses on his GNMA purchases in the sum of \$349,701.66. Claimant also seeks interest at the legal rate, attorneys' fees and costs under the RICO statute; tremble damages under RICO, and punitive damages.

Respondents seek dismissal of the claim in its entirety plus their costs and fees.

### DAMAGES AND RELIEF AWARDED

On September 12, 13, 14 & 15, 1989 in San Diego, California, the undersigned arbitrators heard the controversy in nine sessions between the parties as set forth in submissions to arbitration signed by Claimant Alberto Perez Cantu on February 11, 1988 and by Respondent Gilbert D. Castaneda on July 12, 1988 and Merrill, Lynch, Pierce, Fenner and Smith on July 18, 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. Respondents Merrill, Lynch, Pierce, Fenner and Smith, Inc., Gilbert D. Castaneda and Peter Gerrity are jointly and severally liable and shall pay to Claimant Alberto Perez Cantu the sum of Two Hundred Ten Thousand Dollars and no cents (\$210,000.00).
2. The parties shall each bear their respective costs including attorneys' fees.
3. Merrill Lynch, Pierce, Fenner and Smith is assessed and shall pay to the NASD the sum of \$8,000.00 in forum fees.
4. Pursuant to Section 43 of the National Association of Securities Dealers, Inc ("NASD") Code of Arbitration Procedure, the NASD shall retain the \$1000.00 filing fee previously deposited by the Claimant.

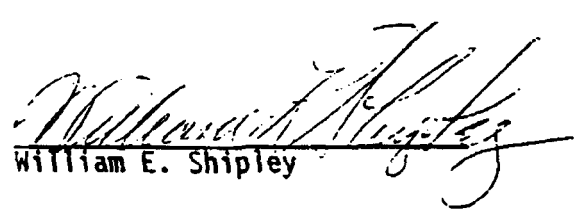
### OTHER ISSUES

Respondent Peter M. Gerrity did not file a submission agreement and objected to the NASD Jurisdiction.

The panel determined that the NASD had jurisdiction and, per Mr. Gerrity's Motion, adopted the Merrill Lynch Answer as to claims against Mr. Gerrity.

ARBITRATORS CONCURRING

DATE SERVED: December 6, 1989

  
William E. Shipley