

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Among

Lynda S. Behrins and  
Kenneth R. Behrins

Claimants

vs.

Merrill Lynch, Pierce Fenner & Smith  
Marcel Wagner  
Gerard McDavitt  
and  
Dee Pak Raj

Respondents

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\* Case #88-01280  
\* Award  
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CASE SUMMARY

Claimants, Lynda S. and Kenneth R. Behrins alleged that Respondents Merrill Lynch, Pierce, Fenner and Smith, Inc., Marcel Wagner, Dee Pak Raj, and Gerard McDavitt ("Respondents") failed to provide accurate information and allegedly in reliance on the information provided to the Claimant, Claimants purchased a large amount of Gillette Co. stock. Claimants alleged that on October 20, 1987, Respondent Wagner stated that due to the decline of Gillette that the Claimants should sell Gillette. Claimants alleged that Respondents were told to sell the Gillette stock only if the sale of Gillette would cover the margin debt. If not, Claimants alleged that Claimant Bruce Behrins told Respondent Wagner, that Claimants would "ride out and cover" his position. Claimants alleged that Respondents wrongfully liquidated their stock at the market and when Claimants learned of Respondents action, it was too late to cancel the liquidation.

Respondents maintained that they provided Claimants with Merrill Lynch's opinion regarding Gillette Co. and that there is no liability for an opinion so long as there is a reasonable basis for it. Respondents maintained that they have no duty to inform Claimants of each detail that may effect their investment. Respondent maintained that they have no continuing duty to provide information to a client. Respondent maintained

that they have no duty to disclose information that is in the public domain. Respondents maintained that Claimants can not show causation between their investment advice and the Claimants' losses and that the losses incurred in Gillette stock were in large part due to the considerable drop in the price of Gillette on Black Monday. Respondents maintained that on October 20, 1988, that in response to a maintenance call from Respondent Wagner, Claimant Bruce Behrins placed an order to sell 25,000 shares of Gillette.

The sale of Gillette resulted in a debit balance in Claimant's account. Respondent Merrill Lynch alleged that a debit balance remains due and owing in Claimants' account and asserted a counterclaim for the debit balance.

Claimants maintained that they are not liable for the debit balances as the Respondents liquidated the account without the authority to do so.

#### RELIEF REQUESTED

Claimants requested damages in the amount of \$619,434.01 plus interest and costs. Respondents requested that Claimants' claim be dismissed in its entirety and that the arbitrators award Merrill Lynch the sum of \$69,416.00 plus interest on its counterclaim. Claimants' requested that Respondent's counterclaim be denied in its entirety.

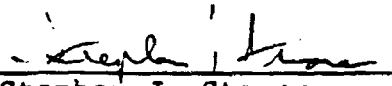
#### AWARD

On November 12, 13, and 14, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimants on April 18, 1988 and by the Respondent Merrill Lynch on May 22, 1988 by Respondent Wagner on August 22, 1988 and by Respondent McDavitt on August 23, 1988. Respondent Dee Pak Raj did not execute a submission agreement; however, an answer was submitted on his behalf and he was represented by counsel. Pursuant to Section 12(a) of the Code of Arbitration Procedure, the arbitration panel exercised its jurisdiction over Respondent Dee Pak Raj. The initial claim was filed on April 22, 1988. The hearing was held in New York City and consisted of 6 sessions. 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 claim of Lynda S. and Kenneth R. Behrins against the Respondent Merrill Lynch, Pierce, Fenner & Smith is in all respects denied except insofar as that Merrill Lynch is directed to reimburse to Claimant Lynda S. Behrins the sum of \$34,079.00 without interest the sum which had been taken by Merrill Lynch from Lynda Behrin, Suzanne Bell joint account.
2. The claims of the Claimant against Respondents Marcel Wagner, Dee Pak Raj and Gerard McDavitt are in all respects denied.
3. The counterclaim of Respondent Merrill Lynch against Claimants is in all respects denied.
4. The parties shall each bear their respective costs, including attorneys fees;
5. Pursuant to Section 43 of the Code of Arbitration Procedure, forum fees are equally assessed against the Claimants and Respondents in the amount of \$3000.00. Claimants are entitled to apply their filing fee of \$1000.00 to this amount, so that the amount due from the Claimants is \$2000.00. Respondents are jointly and severally assessed forum fees in the amount of \$3000.00 payable to the NASD, Inc. through its staff counsel.

ARBITRATORS CONCURRING

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Thomas W. Kelley

  
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Stephen J. Storen

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Stan West

Dated: 12/14/90, 1990

1. The claim of Lynda S. and Kenneth R. Behrins against the Respondent Merrill Lynch, Pierce, Fenner & Smith is in all respects denied except insofar as that Merrill Lynch is directed to reimburse to Claimant Lynda S. Behrins the sum of \$34,079.00 without interest the sum which had been taken by Merrill Lynch from Lynda Behrin, Suzanne Bell joint account.
2. The claims of the Claimant against Respondents Marcel Wagner, Dee Pak Raj and Gerard McDavitt are in all respects denied.
3. The counterclaim of Respondent Merrill Lynch against Claimants is in all respects denied.
4. The parties shall each bear their respective costs, including attorneys fees;
5. Pursuant to Section 43 of the Code of Arbitration Procedure, forum fees are equally assessed against the Claimants and Respondents in the amount of \$3000.00. Claimants are entitled to apply their filing fee of \$1000.00 to this amount, so that the amount due from the Claimants is \$2000.00. Respondents are jointly and severally assessed forum fees in the amount of \$3000.00 payable to the NASD, Inc. through its staff counsel.

ARBITRATORS CONCURRING

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Stan West

Dated: \_\_\_\_\_, 1990