

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

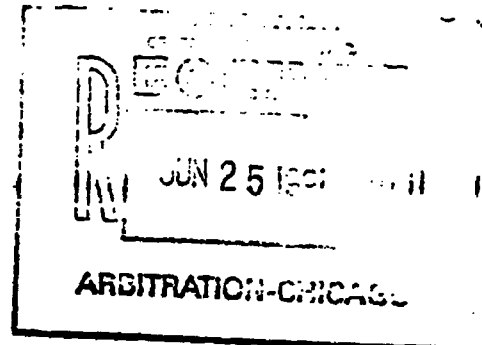
Name of Claimant(s)

John A. Zaucha

88-01555

Name of Respondent(s)

Merrill Lynch, Pierce, Fenner & Smith
David Riebe
Sandra DeGeorges
Susan Burrell
Kerry Kleissle
Barry Gross



REPRESENTATION

John A. Zaucha ("Claimant") appeared Pro se and was advised by Geoffrey Hamlin, Esq.

Merrill Lynch, Pierce, Fenner & Smith, Inc., Susan Burrell and Barry Gross (collectively as "Respondents") were represented by Dennis M. Pape, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about May 2, 1988, Claimant alleged that Respondents gave him misleading information regarding Public Service of New Hampshire bonds. Claimant specifically alleged that Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("MLPF&S") failed to maintain a fiduciary capacity; abused the use of a margin account; failed to process an order to sell Public Service of New Hampshire bonds, manipulated funds and misled him. Claimant specifically alleged that Sandra DeGeorges also failed to maintain a fiduciary capacity; encouraged him to purchase junk bonds; encouraged him to open a margin account; and withheld vital information. Claimant specifically alleged that Susan Burrell failed to carry out a direct sell order of Public Service Company bonds. Claimant specifically alleged that Barry Gross failed to adopt and maintain a fiduciary capacity; encouraged the investment in junk bonds on margin; failed to supervise his employees; and made misleading statements.

In their Statement of Answer filed with the NASD on or about May 2, 1991, Merrill Lynch, Pierce, Fenner & Smith, Inc., Susan Burrell and Barry Gross denied the collective allegations of Claimant. Respondents stated that

the transactions complained of were unsolicited and that at various times Claimant had stated that he was aware of the risks. Respondents further stated that at various times diversification of his portfolio was discussed with and rejected by the Claimant. Respondents also stated that Claimant's losses were the result of his own investment decisions and market conditions.

RELIEF REQUESTED

Claimant requested an award in the amount of \$189,842.00 which includes costs and interest.

Respondents requested that the claims asserted against them be dismissed and that costs be assessed against Claimant.

OTHER ISSUES

Respondent Kerry Kleissle was dismissed as a Respondent by the panel after considering the arguments of the parties. Respondent David Raibe was dismissed by agreement of the parties.

Respondent Sandra DeGeorges was not served with the Statement of Claim and did not submit to arbitration. Ms. DeGeorges did appear and testify at the hearing.

PROCEDURAL MATTERS

On Thursday, May 16, 1991 and Friday, May 17, 1991 in Phoenix, Arizona during a hearing lasting five (5) sessions, including a prehearing conference, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on April 19, 1988 by Claimant John A. Zaucha and on May 1, 1991 by Dennis M. Pape on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Respondents Susan Burrueal and Barry Gross did not file with the NASD a properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.

AWARD

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. The Statement of Claim shall be and hereby is dismissed in its entirety;

2. Each party shall bear its own costs and expenses including attorneys fees incurred in this matter; and

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$550.00 previously deposited with the NASD by the Claimant John A. Zaucha. Claimant shall pay to the NASD the sum of \$1325.00 and Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall pay to the NASD the sum of \$1875.00 as forum fees.

Dated: July 24, 1991

Gregory W. Dawson
Gregory W. Dawson, Esq.
Presiding Chair
Public Arbitrator

Dated: _____

Harold B. Klalber
Harold B. Klalber
Public Arbitrator

Dated: _____

Paul J. Robinson
Paul J. Robinson
Industry Arbitrator

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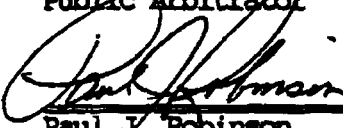
Dated: _____

Gregory W. Dawson, Esq.
Presiding Chair
Public Arbitrator

Dated: _____

Harold B. Klaiber
Public Arbitrator

Dated: 6/17/91



Paul J. Robinson
Industry Arbitrator

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Dated: _____

Gregory W. Dawson, Esq.
Presiding Chair
Public Arbitrator

Dated: 6/20/71

Harold B. Klaiber
Harold B. Klaiber
Public Arbitrator

Dated: _____

Paul J. Robinson
Industry Arbitrator