

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between		
George A. Westcott	Claimant	Case #88-01897
vs.		AWARD
Merrill Lynch, Pierce, Fenner & Smith, Inc.	Respondents	
Lyle Schultz		

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CASE SUMMARY

Claimant, George A. Westcott, contends that Lyle Schultz, a financial advisor with Merrill Lynch, Pierce, Fenner & Smith, Inc., recommended that he invest over three quarters of his portfolio in Safecard Services, Inc., a highly speculative stock and that such recommendation was unsuitable in light of his financial situation and his investment objectives in violation of NASD Rules of Fair Practice, Article III, Section 2. Claimant alleges that Respondents misrepresented that Safecard was a conservative investment and failed to disclose facts about the company in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated there under and Section 12(2) of the Securities Exchange Act of 1933. Claimant further alleges that Respondents failed to inform him of the risks attendant with margin trading in violation of the Federal Reserve Board Regulation T, 12 CFR Section 220 and Rule 431 of the New York Stock Exchange, which sets forth margin requirements. Claimant also contends that in Schultz' absence, his secretary, an unregistered broker, executed an order in violation of Massachusetts General Law Sections 110A and 201(a). Claimant also alleges common law violations.

Respondents deny the allegations of wrongdoing and contend that the contents of the portfolio and the level of trading in Claimant's accounts were consistent with his evolving investment objectives and wishes. Respondents also allege five affirmative defenses.

RELIEF REQUESTED

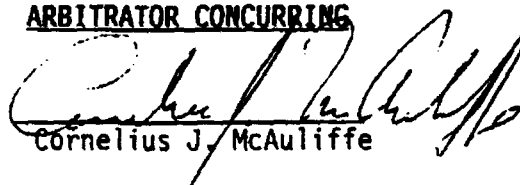
Claimant requests an award of \$370,000.00 including a rescission of the trade executed by the unregistered broker, punitive damages, attorney's fees, costs and other relief that the panel deems just and proper. Respondents request that the panel dismiss the claims in their entirety.

AWARD

On November 29 and 30, 1989, February 6 and 7, 1990 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, on July 7, 1988 and by Respondents, on December 8, 1989. The hearing was conducted in Boston, Massachusetts and consisted of four 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. All claims asserted by Claimant, George A. Westcott against Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Lyle Schultz are hereby dismissed in their entirety.
2. The parties shall each bear their respective costs including attorneys' fees.
3. Pursuant to Section 43 of the Code for Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimant and Claimant is further assessed \$750.00 in forum costs.
4. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is assessed \$1,500.00 which shall be made payable to the National Association of Securities Dealers, Inc.

ARBITRATOR CONCURRING

  
Cornelius J. McAuliffe

c.j.m.  
April 30,

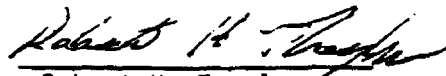
Dated: May 1, 1990

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ARBITRATOR CONCURRING

  
Robert H. Traylor

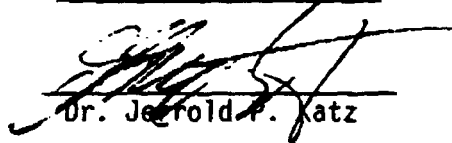
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ARBITRATOR DISSENTING

  
Dr. Jerrold P. Katz

Dated: May 1, 1990

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