

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In The Matter of The Arbitration Between

Michael T. Long and
Stephen E. Gershwind Co-Trustees
Claimants

vs.

Merrill Lynch, Pierce, Fenner & Smith, Inc. and
Thomas Hummer
Respondents

Award

NASD No. 88-01910

Merrill Lynch, Pierce Fenner & Smith, Inc. and
Thomas Hummer
Third Party Claimants

and

Cove Mortgage Company and
TRI-AD, The Research Institute of
Administration, Inc.
Third Party Respondents

TRI-AD, The Research Institute of
Administration, Inc.
Third Party Cross Claimant

and

Cove Mortgage Company
Third Party Cross Respondent

SUMMARY OF ISSUES

This case was filed on June 14, 1988. Claimant alleged the following: negligence, breach of contract and breach of fiduciary duty in the failure to credit claimants' account with accrued interest.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. (MLPFS) and Thomas Hummer (Hummer) denied claimants' allegations and asserted the following affirmative defenses: failure to state any facts sufficient to constitute a valid claim, apportionment of comparative negligence and fault, claims barred by doctrines of estoppel, laches, waiver and unclean hands and failure to

mitigate damages. Respondents MLPFS and Hummer asserted a Third Party Claim against Cove Mortgage Co. (COVE) and TRI-AD, The Research Institute of Administration, Inc. (TRI-AD) for indemnity.

Third Party respondents COVE and TRI-AD denied the allegations of Third Party claimants, with TRI-AD alleging the same affirmative defenses as respondents MLPFS and Hummer, with the exception of failure to mitigate damages.

Third Party respondent TRI-AD asserted a Cross claim for indemnity against Third Party respondent COVE, which COVE denied.

DAMAGES AND RELIEF REQUESTED

Claimant requested the following:

1. Compensatory damages of \$12,000.00.
2. Interest at the rate of 10%.

Third Party claimants MLPFS and Hummer requested indemnity from Third Party respondent COVE and TRI-AD.

Third Party cross claimant TRI-AD requested indemnity from Third Party cross respondent COVE.

DAMAGES AND RELIEF AWARDED

On February 2, 1990 in San Diego, California, the undersigned arbitrators heard the controversy in three sessions between the parties as set forth in submissions to arbitration signed by claimants on August 5, 1988 and by respondents MLPFS and Hummer on November 16, 1988 and by COVE on March 6, 1989. Third Party respondent TRI-AD submitted orally at the hearing to the jurisdiction of the NASD and agreed to forward a written submission agreement. 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. Respondent MLPFS, only, is liable for and shall pay to claimants the sum of \$3,000.00 in compensatory damages.
2. The claim for interest is dismissed.
3. Each and every claim against respondent Hummer is dismissed.
4. Third Party respondent COVE, only, is liable for and shall pay to Third Party claimants MLPFS the sum of \$1,500.00 for indemnity.
5. The Third Party claim against TRI-AD is dismissed.

6. The Third Party cross claim by TRI-AD against COVE is dismissed.

7. The parties shall each bear their respective costs including attorneys' fees.

8. In accordance with Section 43 of the National Association of Securities Dealers, Inc (NASD) Code of Arbitration Procedure, the NASD shall retain the \$400.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrator.

ARBITRATORS CONCURRING

Raymond Prazen, Esq.

Hadley H. Batchelder

DATE SERVED: 02/27/90



William A. Hasse

