

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)

DR. WILLIAM A. RADEFELD and)
BETTY E. RADEFELD,)

Claimants,)

vs.)

) Case #88-01941
) Award

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.)
and ROBERT BERRY)

Respondents.)
)

Heard before the members of the Arbitration Panel:

Thomas Fotopulos, Esq.
Mr. James A. Smith IV
Mr. Ralph Feith

CASE SUMMARY

This claim was filed with the NASD, Inc. on June 16, 1988. The hearing was conducted in Tampa, Florida on August 15, 1989 and September 19, 1989 with a total of six (6) sessions.

Claimants Dr. William A. Radefeld and Betty E. Radefeld ("the Rade-felds") alleged that Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Robert Berry ("Berry"): failed to follow the trading instructions of the Claimants; executed unauthorized trades in Claimants' account and engaged in a fraudulent course of conduct to conceal Respondents' failure to follow trading instructions and the unauthorized trades. Respondents denied liability and alleged that: the losses suffered were beyond Respondents' control; Claimants either authorized or ratified all trades; Claimants have waived or are estopped from claiming unauthorized trades and Claimants actual losses were less than those asked for in the Statement of Claim.

RELIEF REQUESTED

Claimants requested damages in the amount of \$167,943.31 plus interest, punitive damages, attorney's fees and other costs. Respondents requested dismissal of the claim and other costs.

AWARD

On August 15, 1989 and September 19, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on June 13, 1988, and by Respondents Merrill on October 3, 1988 and Berry on September 30, 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. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondent Merrill is hereby liable and shall pay to Claimants the following amounts:
 - a. For Respondent Merrill's failure to sell Claimants' ML Eurofund mutual fund on October 16, 1987, the sum of Forty Seven Thousand Seventy and 31/100 (47,070.31) Dollars plus interest at the legal rate of 12% per annum from October 16, 1987 to the date of payment of this Award,
 - b. For Respondent Merrill's failure to sell Claimants' ML Natural Resources Trust mutual fund on October 9, 1987, the sum of Nine Thousand Two Hundred Seventy Five and 42/100 (\$9,275.42) Dollars plus interest at the legal rate of 12% per annum from October 9, 1987 to the date of payment of this Award.
3. Respondent Merrill is hereby liable and shall, to the extent it has not already done so, credit Claimants' account: Four Thousand Five Hundred Fifty and 40/100 (\$4,550.40) Dollars for the Capital Fund mutual fund; Four Thousand Two Hundred Eighty Six and 59/100 (\$4,286.59) Dollars for the International Holdings mutual fund; and Four Thousand Six Hundred Twelve and 50/100 (\$4,612.50) Dollars for the Basic Value mutual fund.
4. Respondent Merrill is not liable for any alleged unauthorized trades and, therefore, the claim for such is hereby dismissed.
5. Respondent Berry is not liable and, therefore, all claims against him are hereby dismissed.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Four Thousand Five Hundred and 00/100 (\$4,500.00) Dollars (\$750 x 6 sessions). Respondent Merrill is hereby assessed forum fees in the amount of Three Thousand Seven Hundred Fifty and 00/100 (\$3,750.00) Dollars and Claimants are hereby assessed forum fees in the amount of Seven Hundred Fifty and 00/100 (\$750.00) Dollars. The National Association of Securities Dealers, Inc. shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimants with the NASD, Inc. in full satisfaction of Claimants' share of such forum fees.

7. Claimants' request for attorney's fees is hereby dismissed in all respects.
8. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Thomas Fotopulos, Esq.
Mr. Ralph Feith
Mr. James A. Smith IV

Dated: February 16, 1990