

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Bernie Fratto

Claimant

vs.

Merrill Lynch, Pierce, Fenner  
& Smith, Inc., George Fedorow,  
Kenneth Cadarette, and  
Edward Hocking

Respondent(s)

AWARD

CASE NO. 88-02071

SUMMARY OF ISSUES

Claimant Bernie Fratto filed this claim on June 27, 1988 against Merrill Lynch, Pierce, Fenner & Smith, Inc., financial consultant George Fedorow, administrative branch manager Kenneth Cadarette, and office manager Edward Hocking. Claimant alleged that Fedorow breached his fiduciary duty by recommending an unsuitable investment, and failed to disclose the volatility of the stock at issue. Specifically, claimant alleged that his investment of 500 shares of Home Shopping Network, Inc. ("HSN") at \$24-1/4 per share was inconsistent with his stated investment objectives and represented a disproportionate amount of his total net worth. Claimant further alleged that Fedorow failed to disclose that Merrill Lynch was an underwriter of the HSN stock initial public offering.

Respondents denied the allegations and maintained that the order to purchase HSN stock was unsolicited, that Fedorow specifically discussed with claimant the volatile history of HSN stock since its initial public offering in 1986, that the investment complained of was consistent with claimant's previous investment history, that claimant's net worth and investment goals were consistent with the amount and type of stock he purchased, and was suitable to his investment objectives as indicated when he opened his account. Additionally, respondents denied the inference that claimant was improperly pressured by respondents into buying HSN because of Merrill Lynch's status as an underwriter; respondents maintained that the initial public offering occurred over a year before claimant purchased the stock and that the allocation of shares to the branch office was sold at the time of the offering.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages in the amount of \$9,187.00. Respondents requested dismissal of the claim and costs.

### DAMAGES AND RELIEF AWARDED

On July 27, 1989 in a double-session hearing held in Los Angeles, California, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on July 28, 1988 and by Respondents on October 13, 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. All claims against Kenneth Cadarette and Edward Hocking are hereby dismissed.
2. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and George Fedorow are jointly and severally liable for and shall pay to claimant the sum of Seven Thousand Dollars and No Cents (\$7000.00).
3. The parties shall each bear their respective costs including attorneys' fees.
4. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$200.00 filing fee previously deposited by the claimant.

### OTHER ISSUES

Respondent Edward Hocking was not present at the hearing but was represented by counsel.

### ARBITRATORS CONCURRING

DATE SERVED: 09/07/89

  
William R. Newsome