

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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: In the Matter of the Arbitration Between :  
: :  
: Anita J. Faul :  
: Claimant : CASE# 88-02151  
: vs. :  
: :  
: Merrill Lynch Pierce Fenner & Smith, Inc. :  
: Advest, Inc. :  
: Steven J. Shepp :  
: Respondents :  
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Heard before:

Joseph R. Lally, Esq.                      Public Arbitrator  
D. Joan Sampieri                          Public Arbitrator  
Mary Ann M. Melchiorre, Esq.           Industry Arbitrator

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 5, 1988 Claimant Anita J. Faul alleged the Respondents recommended, purchased and/or sold securities on behalf of the Claimant Anita J. Faul without having a reasonable basis for said recommendations, purchases and/or sales; recommended, purchased and/or sold securities on behalf of Claimant Anita J. Faul that they knew or should have known were inconsistent with the financial objectives and needs of the Claimant Anita J. Faul and engaged in excessive security trading disproportionate to the size and character of the account and primarily for the purpose of creating commissions. Claimant Anita J. Faul further alleged the Respondents breached the fiduciary duty owed to her and conducted themselves in a deliberate, wanton and malicious manner and Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Advest, Inc. are liable under the doctrine of respondeat superior. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. maintained all of the trades made in Claimant's account were made with her full knowledge and authorization and there is no factual support for the Claimant's allegations and the financial outcome of the Claimant's trading during the time that her Merrill Lynch accounts were handled by Respondent Steven J. Shepp was a net gain. Respondent Advest, Inc. maintained Respondent Steven J. Shepp and Respondent Advest, Inc. did not intentionally through fraud, manipulation and deception violate any statutes or rules and did not churn the Claimant's account. Respondent Advest, Inc. further maintained they did not conduct themselves in such a manner as to breach the provisions of the Securities Exchange Act of 1934 and they did not conduct themselves in a deliberate, wanton and malicious manner with respect to the account of the Claimant Anita J. Faul.

RELIEF REQUESTED

Claimant Anita J. Faul requested damages in excess of \$75,000.00 together with interest, attorneys' fees, costs and any other relief as the arbitrators may deem just and proper and requested punitive damages in excess of \$75,000.00. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. requested dismissal of claim and that costs be assessed against the Claimant. Respondent Advest, Inc. requested dismissal of claim.

AWARD

On January 3 and 10, 1991 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Anita J. Faul on June 24, 1988 and by Respondent Advest, Inc. on November 1, 1988 and by Respondent Merrill Lynch Pierce Fenner & Smith, Inc. on September 28, 1988 and not signed by Respondent Steven J. Shepp as required pursuant to Section 8 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure. The hearing was conducted at the offices of the National Association of Securities Dealers, Inc. located in Philadelphia, PA and consisted of four (4) hearing 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. In accordance with Section 25 of the Code of Arbitration Procedure, the Respondent Steven J. Shepp was served with the Statement of Claim and given an opportunity to respond.
2. In accordance with Sections 21 and 26 of the Code of Arbitration Procedure, the Respondent Steven J. Shepp was given due notice of the hearing procedure by regular and certified mail and failed to appear at the hearing.

3. In accordance with Section 29 of the Code of Arbitration Procedure, the arbitration panel determined in light of the foregoing information to proceed with the hearing as scheduled.
4. Prior to the commencement of the first hearing session, the arbitration panel was informed that the Claimant Anita J. Faul had reached a settlement agreement with the Respondent Merrill Lynch Pierce Fenner & Smith, Inc.
5. The Respondent Advest, Inc. be and hereby is liable and shall pay to the Claimant Anita J. Faul compensatory damages in the sum of Thirteen Thousand Three Hundred Dollars and Seventy Seven Cents (\$13,300.77), inclusive of interest and punitive damages in the sum of Twenty Five Thousand Dollars and No Cents (\$25,000.00) pursuant to the authority cited by the Claimant.
6. The Respondent Steven J. Shepp be and hereby is liable and shall pay to the Claimant Anita J. Faul compensatory damages in the sum of Twenty Four Thousand Five Hundred Four Dollars and Twelve Cents (\$24,504.12), inclusive of interest and punitive damages in the sum of Twenty Five Thousand Dollars and No Cents (\$25,000.00) pursuant to the authority cited by the Claimant.
7. The parties shall each bear their respective costs, including attorneys' fees.

#### FORUM FEES

Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimant. In addition, the Respondent Advest, Inc. be and hereby is liable and shall pay to the National Association of Securities Dealers, Inc.

the sum of One Thousand Five Hundred Dollars and No Cents (\$1,500.00) to represent forum fees.

ARBITRATORS SIGNATURES

  
Joseph R. Lally, Esq.

  
D. Joan Sampieri

  
Mary Ann M. Melchiorre, Esq.

Date of Decision: March 4, 1991