

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
DR. SIDNEY J. PECK,)
) Claimant,)
) Case #88-02228
vs.) Award
)
MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.,)
) Respondent.)
)

Heard before the members of the Arbitration Panel:

John B. Kelley, Esq.
Mr. Harry Polansky
Anthony S. Paetro, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on July 13, 1988. The hearing was conducted in Fort Lauderdale, Florida on February 1st & 2nd, 1990 and June 11th, 12th, and 13th, 1990, with a total of ten (10) sessions.

Claimant, Dr. Sidney J. Peck ("Peck"), alleged that Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill"), was liable for: unsuitability; negligence; fraud; breach of fiduciary duty; misrepresentation; and violations of NASD and NYSE rules. Specifically, Claimant alleged that Respondent's employee recommended that he purchase certain bonds and open a margin account to purchase stocks, which recommendations were contrary to Claimant's stated investment objectives. Additionally, Claimant alleged that Respondent's employee negligently advised against using stop loss orders and failed to provide a prospectus.

Respondent alleged the affirmative defenses of: waiver; estoppel; contributory negligence; statute of limitations; laches; and failure to mitigate damages. Additionally, Respondent denied that: any recommendations were unsuitable; the risks of investment were misrepresented; any recommendations were made in bad faith; any documents or information were not provided to Claimant or that Merrill was ever informed that Dr. Peck was disabled and was receiving only disability insurance.

RELIEF REQUESTED

Claimant requested damages in the amount of \$400,000.00 plus interest, punitive damages, and other costs. Respondent requested dismissal of the claim plus attorney's fees and other costs.

AWARD

On February 1st & 2nd, 1990 and June 11th, 12th, & 13th, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on December 29, 1988, and by Respondent on September 8, 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 hand-written, 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 Claimant the nominal damages of One and 00/100 (\$1.00) Dollar.
3. Respondent's request for costs and attorney's fees is hereby dismissed in all respects.
4. Claimant's request for costs and punitive damages is hereby dismissed in all respects.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed the Respondent forum fees in the amount of Seven Thousand Five Hundred and 00/100 (\$7,500.00) Dollars of which Seven Hundred Fifty and 00/100 (\$750.00) Dollars shall be paid directly to the Claimant as a return of his filing fee and Six Thousand Seven Hundred Fifty and 00/100 (\$6,750.00) Dollars shall be paid to the NASD, Inc. 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 Claimant in partial satisfaction of such forum fees.
6. 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

John B. Kelley, Esq.
Mr. Harry Polansky
Anthony S. Paetro, Esq.

Dated: July 5, 1990