

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
Edmond and Etna E. Spires,)
) Claimants,)
) Case #88-02363
vs.) Award
)
Merrill Lynch, Pierce, Fenner & Smith, Inc.,)
)
) Respondents.)

Heard before the members of the Arbitration Panel:

George S. Coit Jr., Esq.
Mr. Roger C. Benson
Mr. Andrew Fellios

CASE SUMMARY

This claim was filed with the NASD, Inc. on July 25, 1988. The hearing was conducted in Tampa, Florida on May 10, 1989 and August 14, 1989 with a total of 4 sessions.

Claimants, Edmond and Etna Spires ("the Spires") alleged that Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") were liable for breach of contract and negligence for failing to sell shares in Claimants' account pursuant to Claimants' instructions. Specifically, Claimants alleged that Respondent had failed to place stop orders for Claimants account as instructed. Respondent alleged that in February 1984 stop limit orders were not accepted for trades on the American Stock Exchange. Respondent asserted the additional affirmative defenses of estoppel; waiver; ratification; laches; comparative negligence and alleged that any losses were caused solely by the Claimants.

RELIEF REQUESTED

Claimants requested damages in the amount of Seventy One Thousand Five Hundred Twenty-Three and 00/100 (\$71,523.00) Dollars plus interest and other costs. Respondent requested dismissal of the claim and other costs.

AWARD

On May 10, 1989 and August 14, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on July 18, 1988, and by Respondent on October 3, 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 is liable and shall pay to the Claimants the amount of Twenty Eight Thousand Five Hundred and 00/100 (\$28,500.00) Dollars inclusive of costs and interest.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Two Thousand and 00/100 (\$2,000) Dollars (\$500 x 4 sessions). The Claimants have been assessed forum fees in the amount of One Thousand and 00/100 (\$1,000) Dollars. The National Association of Securities Dealers, Inc. shall retain the Five Hundred and 00/100 (\$500.00) Dollar filing fee previously deposited by the Claimant in partial satisfaction of such forum fees. The Respondent has been assessed forum fees in the amount of One Thousand and 00/100 (\$1,000) Dollars which it shall pay directly to the NASD, Inc.
4. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

George S. Coit Jr., Esq.
Mr. Roger C. Benson
Mr. Andrew Fellios

Dated: August 25, 1989