

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Among

Robert B. and Mary J. Fleming

Claimants

Case #88-02421

vs.

Award

Merrill Lynch Pierce Fenner & Smith, Inc.
and Len Pumer

Respondents

CASE SUMMARY

Claimants, Robert B. and Mary J. Fleming ("Flemings"), alleged Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Len Pumer ("Pumer") made unsuitable investments in their account and engaged in churning. Claimants further stated their objective was to invest conservatively and use the proceeds to aid in their childrens' education. They also contended virtually every transaction (though marked "unsolicited") was solicited and recommended by Pumer.

Respondents maintained Claimants' investment objectives were intermediate and long-term price appreciation and their risk factors were speculative and high risk. Respondents further stated Pumer kept the Claimants closely advised regarding their holdings and that Mr. Fleming watched the account closely as well and knew the risks involved. Finally, Respondents maintained Claimants did not state facts (in their statement of claim) supporting their allegations of unsuitability or churning.

RELIEF REQUESTED

Claimants, Flemings, requested actual damages in the amount of \$125,000.00. Respondents, MLPFS and Pumer, requested Claimants' claim be dismissed.

AWARD

On August 22, 1990, August 23, 1990, September 27, 1990 and October 10, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimants, Flemings, on July 25, 1988 and by the Respondents, MLPFS and Pumer, October 12, 1988 and September 16, 1988, respectively. The hearings were held in

Southfield and Troy, MI and consisted of five (5) sessions. The arbitration panel, having considered the pleadings, the testimony and the evidence presented at the hearings, has determined in full and final resolution of the issues submitted for determination as follows:

1- The Respondents, MLPFS and Pumer, hereby are liable, jointly and severally, and shall pay to the Claimants, Flemings, the sum of \$85,000.00, interest specifically excluded;

2- The parties shall each bear their respective costs, including attorneys' fees;

3- Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimants;

4- Forum fees are payable to the NASD, Inc. through its staff counsel in accordance with Section 43 of the Code of Arbitration Procedure and are assessed as follows:

a- Respondent, Pumer, is assessed forum fees in the amount of \$1,875.00;

b- Respondent, MLPFS, is assessed forum fees in the amount of \$937.50;

c- Claimant, Flemings, are assessed forum fees in the amount of \$937.50.


Francis C. Flood

Marshall Schugar

Harry G. Hutchinson, IV

November 1, 1990

Southfield and Troy, MI and consisted of five (5) sessions. The arbitration panel, having considered the pleadings, the testimony and the evidence presented at the hearings, has determined in full and final resolution of the issues submitted for determination as follows:

1- The Respondents, MLPFS and Pumer, hereby are liable, jointly and severally, and shall pay to the Claimants, Flemings, the sum of \$85,000.00, interest specifically excluded;

2- The parties shall each bear their respective costs, including attorneys' fees;

3- Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$750.00 filing fee previously de[posit]ed by the Claimants;

4- Forum fees are payable to the NASD, Inc. through its staff counsel in accordance with Section 43 of the Code of Arbitration Procedure and are assessed as follows:

a- Respondent, Pumer, is assessed forum fees in the amount of \$1,875.00;

b- Respondent, MLPFS, is assessed forum fees in the amount of \$937.50;

c- Claimant, Flemings, are assessed forum fees in the amount of 937.50.

Francis C. Flood

Marshall C. Schugar
Marshall Schugar

Harry G. Hutchison, IV

November 1, 1990

Southfield and Troy, MI and consisted of five (5) sessions. The arbitration panel, having considered the pleadings, the testimony and the evidence presented at the hearings, has determined in full and final resolution of the issues submitted for determination as follows:

1- The Respondents, MLPFS and Pumer, hereby are liable, jointly and severally, and shall pay to the Claimants, Flemings, the sum of \$85,000.00, interest specifically excluded;

2- The parties shall each bear their respective costs, including attorneys' fees;

3- Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimants;

4- Forum fees are payable to the NASD, Inc. through its staff counsel in accordance with Section 43 of the Code of Arbitration Procedure and are assessed as follows:

a- Respondent, Pumer, is assessed forum fees in the amount of \$1,875.00;

b- Respondent, MLPFS, is assessed forum fees in the amount of \$937.50;

c- Claimant, Flemings, are assessed forum fees in the amount of 937.50.

Francis C. Flood

Marshall Schugar



Harry G. Hutchison, IV

November 1, 1990