

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of Arbitration Between		} NASD NO. 88-02561
MARGUERITE ERRICO	} Claimant	
v.		
MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.	} Respondent	

CASE SUMMARY

In a claim filed with the NASD on or about August 12, 1988, Claimant Marguerite Errico, ("Errico") alleged violations by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. of Section 10(b) of the Securities Exchange Act of 1934, rule 10(b)-5 promulgated thereunder, violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), violation of the Illinois Consumer Fraud and Deceptive Business Practices Act and common law fraud. Specifically, Errico alleged that her Stockbroker, Bruce Bogen invested in unsuitable securities given her income producing investment objective, misrepresented his experience and knowledge of the investment field and excessively traded her account to generate commissions. Errico also alleged that Bogen fraudulently induced her to execute an arbitration agreement and alleged that Merrill Lynch failed to properly supervise Bogen.

Merrill Lynch denied all allegations of the claim and specifically stated that the claim was time barred under the Illinois Securities law of 1953. Merrill Lynch also denied that Errico was entitled to money damages. Additionally, Merrill Lynch alleged that no prima facie claim could be sustained under the RICO Act.

RELIEF REQUESTED

Errico requested damages of \$100,000, interest, costs and punitive damages. Merrill Lynch argued that the claims at her cost.

9-10-1-7

OTHER ISSUES

During opening statements the Claimant reduced her compensatory damage claim from \$115,000 to \$22,699.77.

AWARD

On Thursday, November 28, 1989 and Friday, January 5, 1990 during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on November 28, 1988 by Claimant Marguerite Errico and on December 13, 1988 by Stephen Lyders on behalf of Respondent Merrill Lynch Pierce, Fenner & Smith, Inc.

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The panel considered the threshold question of whether or not Mrs. Errico was fraudulently induced to execute the contract to arbitrate the instant dispute. The panel determined that the contract to arbitrate was valid and therefore will dispose of the claims on its merits;

2. Errico's claims asserted against Merrill Lynch shall be and are hereby dismissed in their entirety;

3. Merrill Lynch's motion for fees and costs from Errico for the initial day of hearing on November 28, 1989 is denied. Therefore, the parties shall each bear their respective costs and expenses including any attorney's fees incurred in this matter; and

4. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$750.00 filing fee previously deposited with the NASD by the Claimant Marguerite Errico and no additional forum fees are assessed against either party.

BY THE PANEL

S/John W. [unclear] _____
Presiding Chair

S/Alan S. Farnell, Esq. _____

S/Joy B. Shulruff, Esq. _____