

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Claire Walter

Claimant

vs.

CASE #88-02633
AWARD

Merrill Lynch Pierce Fenner & Smith, Inc.
Donald J. Kelly

Respondents

CASE SUMMARY

Claimant Claire Walter ("Walter") alleges that Respondent Donald J. Kelly ("Kelly") failed to timely execute the sale of specific mutual funds in her account after Walter had repeatedly requested Kelly to do so. Walter further alleges that this failure to timely execute the sale resulted in a depreciation in the value of the funds. In addition, Walter contends that Respondent Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") is responsible for Kelly's misconduct under the doctrine of Respondent superior and as a result of its failure to properly supervise Kelly.

Respondents Merrill Lynch and Kelly deny all allegations of wrongdoing made against them and contend that they always acted in good faith and in a commercially reasonable manner with respect to Walters account.

RELIEF REQUESTED

Claimant Walter requests actual damages in the amount of \$6,000.00 plus attorney fees and costs. Claimant also requests punitive damages in the amount of \$4,000.00. Respondents Merrill Lynch and Kelly request dismissal of all claims plus attorney fees and costs to be assessed against the Claimant.

AWARD

On November 8, 1989, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant Claire Walter on July 26, 1988, and by Respondent Merrill Lynch Pierce Fenner & Smith, Inc. on January 20, 1989 and by Respondent Donald J. Kelly on November 8, 1989. 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. Claim be Claimant be and hereby is dismissed.
2. Claim for punitive damages be and hereby also is dismissed.

3. The parties shall each bear their respective costs including attorney's fees.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$200.00 filing fee previously deposited by the Claimant, and assess an additional \$200.00 against Respondent Donald J. Kelly. Also, Respondent Kelly be and hereby is liable and shall reimburse Claimant the \$200.00 filing fee previously deposited by her.

CONCURRING ARBITRATOR

/s/ _____
David F. Adler

DATED: November 8, 1989

5. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain ~~and~~ the \$ 200 filing fee previously deposited by the Claimant, and

issue and interest thereon against David J. Kelly. Also David J. Kelly be personally liable and shall reimburse himself the \$200 fee previously deposited.

David J. Kelly (11-8)
~~Arbitrator #1 Chairman~~

David F. Adler

[Signature]
Arbitrator #2

[Signature]
Arbitrator #3

Helen Mayans (11-8-89)

History
Case
Comments see