

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Anil K. Agarwal, Sudha Agarwal and
Ansar Khan

Claimants

and

Merrill Lynch Pierce Fenner & Smith and
John S. Roberts

Respondent(s)

AWARD
CONSOLIDATED
Case No. 88-03212
and 88-03215

CASE SUMMARY

Dr. Ansar W. Khan ("Khan"), Dr. Anil Agarwal and Sudha Agarwal ("Agarwals") (collectively referred to herein as "Claimants") alleged the following:

1. On October 20, 1987 John S. Roberts ("Roberts"), a registered representative for Merrill Lynch, Pierce, Fenner and Smith, Inc. ("Merrill Lynch") (Roberts and Merrill Lynch are collectively referred to herein as "Respondents") recommended the purchase of certain option contracts and further stated that the approximate cost of such purchases would be about \$10,000.00;

2. Dr. Khan informed Roberts that the Claimants could spend up to \$10,000.00 and since Roberts' quote was within that range, Roberts could place limit orders for certain option contracts;

3. Roberts placed market orders for the options and the orders were filled at a cost of approximately \$107,000.00;

4. Roberts failed to inform the Claimants of the risk of placing any orders with the Chicago Board of Options on October 20, 1987;

5. Roberts failed to properly execute the orders;

6. Dr. Agarwal never authorized the orders entered by the Respondents; and

7. The above acts by the Respondents constituted:

- a) Violations of the rules of the NASD and CBOE,
- b) Negligence,

- c) Breach of written and oral contracts,
- d) Breach of fiduciary duty,
- e) Misrepresentation,
- f) Violations of the Securities and Exchange Act of 1934 and the Securities Act of 1933.

Respondents alleged as follows:

1. They denied the claims of the Claimants;
2. Respondents placed the orders in the exact manner in which the Claimants had instructed;
3. Claimants failed to pay for the option positions which resulted in deficits in the Claimants' accounts;
4. Pursuant to the customer agreements the Respondents liquidated the balance of the Claimants' security positions with the exception of a partnership interest; however, debit balances remain in the Claimants' accounts for which the Claimants remain liable; and
5. The Agarwals ratified all the orders and appointed Mr. Khan as their agent to authorize orders on their behalf.

RELIEF REQUESTED

Claimants requested that the counterclaims be dismissed and they be awarded damages in an amount equal to the value of their portfolios as they would have existed without the improper liquidation, plus prejudgment interest, and attorneys fees and costs.

Respondents requested that the claims of the Claimants be dismissed. Merrill Lynch further requested damages against the Agarwals in the amount of \$38,548.99 and against Khan in the amount of \$25,637.05, plus prejudgment interest on such amounts from October 22, 1987 until paid, attorneys' fees, and costs.

AWARD

On October 17, 1988 the NASD received the Claimants' Statement of Claim. On December 4, 5 and 14, 1989 the undersigned arbitrators heard the controversy between the parties as set forth in their submissions to arbitration signed on September 27, 1988 by Anil K. Agarwal and Sudha Agarwal, on September 28, 1988 by Ansar Khan, and on November 15, 1988 by James A. Childress on behalf of Merrill Lynch, Pierce, Fenner & Smith, Inc.

John S. Roberts was a registered representative of Merrill Lynch at the time the dispute arose and affirmed on the record that he was submitting this controversy to arbitration and to the jurisdiction of the NASD. The hearing was held in seven sessions in Omaha, Nebraska.

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

1. Merrill Lynch and John S. Roberts shall be jointly and severally liable for and shall pay the following amounts to:

- a. Anil K. and Sudha Agarwal: \$17,968.00, interest of \$3,908.12 which accrued through March 19, 1990, plus interest accruing at the per diem rate of \$4.43 from March 19, 1990 until payment;
- b. Ansar Khan: \$102,320.72, interest of \$22,320.72 which accrued through March 19, 1990, plus interest accruing at the per diem rate of \$25.30 from March 19, 1990 until payment.

2. The parties shall bear their own attorneys' fees and costs; and

3. Pursuant to Section 43 of the NASD Code of Arbitration Procedure, the Claimants shall be refunded their initial deposit that was made to the NASD and Merrill Lynch and John S. Roberts shall be jointly and severally liable for and shall pay to the NASD \$3,500 as forum fees.

By the Panel

Dated: 04/11/90

/S/ David W. Dunn,
Presiding Chair

Dated: 04/12/90

/S/ Sam Brower

Dated: 04/12/90

/S/ George E. Bukaty

Date Served: 05/01/90