

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)
)
VIOLET UPRIGHT PECK.)
)
) Claimant.)
) Case #88-03327
vs.) Award
)
MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.,)
)
) Respondent.)
)

Heard before the members of the Arbitration Panel:

John B. Kelley, Esq.
Mr. Harry Polansky
Anthony S. Paetro, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on October 26, 1988. The hearing was conducted in Fort Lauderdale, Florida on July 5th and 6th, 1990 with a total of four (4) sessions.

Claimant, Violet Upright Peck ("Peck"), alleged that Respondent, Merrill Lynch, Pierce, Fenner and Smith, Inc. ("Merrill"), was liable for: unsuitability; negligence; fraud; breach of fiduciary duty; misrepresentation; and violations of NASD and NYSE rules. Specifically, Claimant alleged that Respondent's employee recommended that she purchase certain bonds and open a margin account to purchase stocks, which recommendations were contrary to Claimant's stated investment objectives. Additionally, Claimant alleged that Respondent's employee negligently advised against using stop loss orders and failed to provide a prospectus.

Respondent alleged the affirmative defenses of: waiver; estoppel; contributory negligence; statute of limitations; laches; and failure to mitigate damages. Additionally, Respondent denied that: any recommendations were unsuitable; the risks of investment were misrepresented; any recommendations were made in bad faith; any documents or information were not provided to Claimant or that Merrill was ever informed that Dr. Peck was disabled.

RELIEF REQUESTED

Claimant requested damages in the amount of \$200,000.00. Respondent requested dismissal of the claim plus costs and attorney's fees.

AWARD

On July 5th and 6th, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on October 10, 1988, and by Respondent on July 26, 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. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a hand-written, 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, Merrill, is hereby liable and shall pay to Claimant the amount of Eighteen Thousand One Hundred Ten and 00/100 (\$18,110.00) Dollars.
3. Respondent's request for attorney's fees is hereby dismissed in all respects.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Four Thousand and 00/100 (\$4,000.00) Dollars (\$1000 x 4 sessions). Claimant is hereby assessed forum fees in the amount of Three Thousand and 00/100 (\$3,000.00) Dollars, One Thousand and 00/100 (\$1,000.00) Dollars of which has been already paid as a filing fee and the Respondent is hereby assessed forum fees in the amount of One Thousand and 00/100 (\$1,000.00) Dollars. The NASD, Inc. shall retain the One Thousand and 00/100 (\$1,000.00) Dollar filing fee previously deposited by the Claimant in partial satisfaction of such forum fees.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

John B. Kelley, Esq.
Mr. Harry Polansky
Anthony S. Paetro, Esq.

Dated: July 23, 1990