

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In The Matter of The Arbitration Between

Rafael Cerbon

Claimant

vs.

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Monarch Life Insurance, Co.
Kay-Beth Vietti
Joe Van Parys

Respondents

Award

NASD No. 88-03560

SUMMARY OF ISSUES

This case was filed on October 25, 1988. Claimant alleged the following: misrepresentation and lack of suitability on the purchase of Monarch Life Insurance Policies and Merrill Lynch, Pierce, Fenner & Smith, Inc. (MLPFS) Intermediate Government Bond Portfolio.

Respondents denied each and every allegation of the claimant and alleged he was a sophisticated investor at the time of the investments and full disclosure was made.

DAMAGES AND RELIEF REQUESTED

Claimant requested the following:

1. Compensatory damages of \$300,000.
2. Interest.
3. Attorney's fees.

DAMAGES AND RELIEF AWARDED

On January 25 and 26, 1990 in San Diego, California, the undersigned arbitrators heard the controversy in four sessions between the parties as set

forth in submissions to arbitration signed by Claimant on November 9, 1988 and by Respondents MLPFS on January 13, 1989, by Kay-Beth Vietti on December 19, 1988 and by Joe Van Parys on December 19, 1988. Monarch Life Insurance Co. submitted to the jurisdiction of the NASD orally at the hearing and agreed to forward a written submission agreement. 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. Respondents MLPFS, Kay-Beth Vietti and Joe Van Parys, only, are jointly and severally liable for and shall pay to claimant the sum of \$247,158.00 in compensatory damages.

2. Respondents MLPFS, Kay-Beth Vietti and Joe Van Parys, only, are jointly and severally liable for and shall pay to claimant the sum of \$17,918.00 in interest.

3. Each and every other claim is dismissed including any and all claims against respondent Monarch Life Insurance Co.

4. The claim for punitive damages is dismissed.

5. The parties shall each bear their respective costs including attorneys' fees.

6. In accordance with Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators.

7. Also in accordance with Section 43, the arbitrators assess forum fees against MLPFS, only, in the amount of \$3,000.00 payable to the NASD.

OTHER ISSUES

Claimant amended his claim at the hearing to include punitive damages.

ARBITRATORS CONCURRING

DATE SERVED: 02/21/90


William R. Newsome

Kenneth J. Gross

A. James Miranti

OTHER ISSUES

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