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NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Virginia B. Smith

Claimant(s)

vs.

Michael Wong and Merrill  
Lynch, Pierce, Fenner & Smith, Inc.

Respondent(s)

AWARD

CASE NO. 88-03570

CASE SUMMARY

The claim in this matter was filed on November 15, 1988. Claimant alleged that she is unsophisticated and inexperienced in the area of buying and selling securities. She alleged that she took her portfolio of stock worth about \$159,000. to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. (MLPFS) and its broker, Respondent Michael Wong. She alleged that she explained that she had acquired the portfolio from a trust fund, that she had never before employed a securities brokerage firm, and that she emphasized that she was dependent on the income from the portfolio as her principal source of income and that she needed to protect her capital while maximizing dividends in the least risky manner possible. Claimant alleged that Respondents "churned" the account, that Respondents made fraudulent and negligent misrepresentations to her, that Respondents breached their fiduciary duty to Claimant, and that Respondents violated 17 C.F.R. Section 240.10b-5. Respondents alleged that Claimant is a sophisticated and experienced investor, and that Respondent Wong had no knowledge of Claimant's alleged dependence on her portfolio as a primary source of income, that Claimant's claim that she wanted to "protect" the capital, while maximizing dividends in the "least risky" manner is not true, that the status of Claimant's account was the direct result of fully disclosed risks, together with Claimant's frequent withdrawals against the account, that Respondent Wong did everything possible to protect the net worth of her portfolio, made no representations to Claimant, and that Respondents advised Claimant regarding the excessive withdrawals and use of her VISA card. Respondents asserted eleven defenses.

DAMAGES AND RELIEF REQUESTED

Claimant requested reimbursement of \$20,000 - 30,000 trading commissions, \$43,000 loss of portfolio value, \$10,000 capital gains tax paid, \$16,000 estimated loss of income, for a total claim of \$89,000 - 99,000. Additionally, Claimant requested punitive damages in the amount of \$1,000,000.00. Respondents requested that the claim be dismissed.

DAMAGES AND RELIEF AWARDED

On June 27, 1989, the undersigned arbitrators heard the controversy between

the parties as set forth in submissions to arbitration signed by Claimant on November 7, 1988, and by Respondent Wong on June 27, 1989 and by Respondent MLPFS on January 13, 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. Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. is solely liable for and shall pay to Claimant the sum of Nineteen Thousand Seventy-Six Dollars and No Cents (\$19,076.00).

2. Claimant's request for punitive damages is denied.

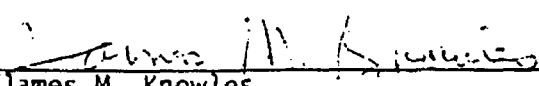
3. The parties shall each bear their respective costs including attorneys' fees.

4. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$1,000 filing fee previously deposited by the Claimant. Further, pursuant to Section 43 of the National Association of Securities Dealers, Claimant and Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. are each assessed \$1,500 in forum fees to be paid directly to the National Association of Securities Dealers, Inc.

PRESIDING ARBITRATORS

DATE SERVED: 08/17/89

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John B. Reilly

  
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James M. Knowles

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Robert I. Recker