

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between	:
	:
Menachem Margalioth	:
	:
Claimant	:
	:
vs.	:
	:
Merrill Lynch, Pierce, Fenner & Smith, Inc.	:
Sonja Kohn	:
	:
Respondents	:

AWARD

#88-03573

Case Summary

Claimant asserts that Respondent Sonja Kohn made misrepresentations concerning the borrowing of money (i.e. margin) to purchase GNMA Bonds owned by an affiliate of Merrill Lynch. Further Claimant contends Sonja Kohn made misrepresentations concerning whether the bonds were suitable for Claimant. Claimant contends both Respondents breached fiduciary duties to Claimant. Respondent Merrill Lynch denies the Claimant's allegations and contends that the drop in value of GNMA Bonds was the result of the April 1987 rise in interest rates. Further they contend the account belonged to Saul Stipelman. Merrill Lynch counterclaims for attorney fees resulting from Claimant's refusal to arbitrate and certain motion practice in New York State Supreme Court as well as the U.S. District Court for the Southern District of New York. The Merrill Lynch counterclaim had been for \$25,000.00 but reduced during the hearing to \$12,122.59. Respondent Sonja Kohn also counterclaimed for her legal fees and for damages to her professional reputation, but this counterclaim was withdrawn by Sonja Kohn during the hearing.

Relief Requested

Claimant seeks \$43,000.00 in actual damages and punitive damages of \$5,000,000.00 plus interest costs and disbursements. Merrill Lynch seeks \$12,122.59 for its counterclaim plus interest and costs. Respondent Sonja Kohn withdrew her counterclaim. Claimant seeks dismissal of the Merrill Lynch counterclaim.


Award


On May 22, June 22 and August 22, 1989 in 6 sessions in New York City, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration by Claimant on November 6, 1988 and by Respondents on February 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. Respondent Merrill Lynch's request for confidentiality of documents be and hereby is denied.
2. Claims for punitive damages against both Respondents be and hereby are dismissed in their entirety.
3. Claims against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. be and hereby are dismissed in their entirety.
4. The counterclaim by Merrill Lynch is dismissed in its entirety and the panel notes the counterclaim by Respondent Sonja Kohn was withdrawn.
5. As to claims against Respondent Sonja Kohn, Sonja Kohn be and hereby is liable and shall pay to the Claimant Sixteen Thousand Dollars and No Cents (\$16,000.00), plus interest of 9% from the date of this Award to the date of payment.
6. The parties shall each bear their respective costs including attorney fees.

7. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$400.00 filing fee previously deposited by the Claimant and assess the balance of \$5,600.00 against Respondents Merrill Lynch and Sonja Kohn jointly and severally.

This day September 21, 1989


Constantine N. Katsoris


Edmond E. Chapus


Louis Green