

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

George B. Fisher et al.

88-03726

Name of Respondent(s)

Merrill Lynch, Pierce, Fenner & Smith
Merrill Lynch Money Markets, Inc.
Merrill Lynch and Company

CHICAGO-NO.

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CASE SUMMARY

George B. Fisher, IV ("Fisher"), the Estate of Ellen R. Fisher, and Omnisports, a partnership d/b/a the Snug Company (collectively referred to herein as the "Claimants") alleged as follows:

1. Henri B. Moreault ("Moreault") a registered representative of A. G. Becker Paribas, Inc. ("Becker") (Becker was purchased by Merrill Lynch Fenner & Smith, Inc., Merrill Lynch Money Markets, Inc., and Merrill Lynch & Co. who are collectively referred to herein as "Respondents") engaged in the following:

a. made material misrepresentations and omissions to the Claimants regarding the purchase and sell of Felmont Oil Corporation ("Felmont") securities;

b. made unauthorized trades in the Claimants' accounts;

c. traded in the Claimants' accounts while unregistered, as did Mr. Carney another agent for Becker;

d. made false statements to the Claimants regarding Felmont buy outs, takeovers, and gold and oil finds;

e. failed to execute the Claimants' order to sell Felmont stock;

f. recommended unsuitable securities for the Claimants' accounts; and

e. manipulated the price of Felmont;

2. Becker failed to properly supervise Moreault and the operation of Becker's Sun Valley office;

3. Becker failed to enforce two separate policies relating to concentration, which if properly enforced could have prevented some of the damages suffered by the Claimants; and

4. Respondents are liable to the Claimants for common law fraud, breach of fiduciary duties, negligence, violations of federal and state securities laws as well as various rules of the New York Stock Exchange, National Association of Securities Dealers, American Stock Exchange, and the Chicago Board of Options.

Respondents denied the claims of the Claimants and alleged as follows:

1. Fisher was a sophisticated investor and he was intimately aware of the risks and nature of Felmont securities;

2. the trading which occurred in the Claimants account was consistent with the Claimants investment objectives which is evidenced by the fact that Fisher owned a substantial amount of Felmont stock at the time he transferred his account to Becker and by the fact that Fisher had already made a substantial profit in a oil company, Bow Valley, which was a investment similar to Felmont;

3. Becker had a right to rely on Fisher's previous trading activity in determining suitability;

4. Fisher was in control of and authorized all trading which occurred in the Claimants' accounts;

5. Fisher was aware of the investment strategy being implemented in the Claimants' accounts on a daily basis;

6. Fisher never gave an unequivocal order to sell that was refused by any Becker agent;

7. Moreault had a reasonable basis for recommending Felmont and any statements made by Moreault regarding Felmont were not calculated to and did not impact the price of Felmont;

8. the Claimants did not suffer any loss in Felmont stock when you calculate the difference between the purchase price and sale price on the stock; and

9. the Claimants claims are barred under the doctrines of waiver, ratification, assumption of the risk, failure to mitigate, unclean hands, estoppel, and contributory negligence.

RELIEF REQUESTED

Claimants requested the following compensatory damages:

George B. Fisher	\$1,334,490.00
OmniSports	\$ 698,456.00
Ellen R. Fisher	\$ 38,248.00

Further, the Claimants requested punitive damages equal to three times the amount of actual damages and prejudgment interest.

The Respondents requested that all of the claims of the Claimant be dismissed with prejudice.

PROCEDURAL SUMMARY

On December 12, 1988 the NASD received the claim of the Claimants. On February 5, 6, 7, 8 and 9, 1990 and September 17, 18, 19, and 21, 1990 in a hearing lasting eighteen (18) sessions in Denver, Colorado, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on November 23, 1988 by George B. Fisher, IV, individually and on behalf of OmniSports, d/b/a the Snug Company and the Estate of Ellen B. Fisher. The Respondents affirmed on the record through their counsel that they were submitting this controversy to NASD arbitration.

The Claimants made a motion to amend their Statement of Claim to include a claim for losses suffered on U.S. Treasury Bond investments. The panel denied the motion.

AWARD

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

1. The Respondents shall be jointly and severally liable for and shall pay the following amounts to:

George B. Fisher	\$133,449.00
OmniSports	\$698,456.00
Ellen Fisher	\$ 38,248.00

together with interest on said amounts accruing at the rate of 8% per annum commencing June 1, 1981 compounded annually and accruing thereon until payment. The prejudgment interest is being awarded pursuant to the authority cited in the Claimants' post-hearing brief, page 31;

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

3. The Claimants request for punitive damages is hereby denied; and

4. Pursuant to Section 43(c) of NASD Code of Arbitration Procedure the NASD shall retain \$9,000 of \$10,000 deposited by the Claimant for forum fees and refund to the Claimant the \$1,000 balance. The Respondents shall be jointly and severally liable for and shall pay to the NASD \$9,000 as forum fees.

Arbitrator(s) Signature

Dated: _____

/s/ _____
Thaddeus J. Tecza, Ph.D
Presiding Chair

Dated: _____

/s/ _____
Aleron H. Larson, Jr.

Dated: _____

/s/ _____
Jerome B. Kelly

88-3726

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Arbitrator(s) Signature

Dated: _____

/s/ _____
Thaddeus J. Tecza, Ph.D
Presiding Chair

Dated: Nov. 5, 1990

/s/ Aleron H. Larson Sr.
Aleron H. Larson, Jr. Sr.

Dated: _____

/s/ _____
Jerome B. Kelly

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Arbitrator(s) Signature

Dated: _____

/s/ _____
Thaddeus J. Tecza, Ph.D
Presiding Chair

Dated: _____

/s/ _____
Aleron H. Larson, Jr.

Dated: 11/5/90

/s/ Jerome B. Kelly
Jerome B. Kelly

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