

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Allan R. Koretz, individually and d/b/a
Rags Investors and as custodian for
Robert A. Koretz, Richard J. Koretz
and Ronald W. Koretz;
Riverside No. 5 Partners; and Riverside
No. 10 Partners

89-00069

Name of Respondents

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

REPRESENTATION OF PARTIES

Claimants were represented by Stuart Bennett, Esq. and Carla Minckley, Esq. of Brega & Winters, P.C., Denver, CO.

Respondents were represented by Elizabeth W. Sachs, Esq. and Terry Garnett, Esq. of Paul, Hastings, Janofsky & Walker, Los Angeles, CA.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about January 16, 1989, Allan R. Koretz, individually and d/b/a Rags Investors and as custodian for Robert A. Koretz, Richard J. Koretz and Ronald W. Koretz; Riverside No. 5 Partners; and Riverside No. 10 Partners ("Claimants") alleged that Henri B. Moreault ("Moreault") and John Carney ("Carney") account executives employed by A.G. Becker Paribas Incorporated ("Becker") in late 1980 and 1981 made material misrepresentations in connection with their purchase of Felmont Oil Corporation ("Felmont") stock. Claimants also alleged that Moreault and Carney failed to disclose the following material facts:

- a) Becker recommended the sale of oil stocks in December 1980;
- b) Felmont stock was overvalued in relation to its assets and reserves;
- c) The John Herold Report valued Felmont's reserves at not more than \$20.00 per share;
- d) Moreault did not have a reasonable basis for recommending that

Claimant purchase and retain Felmont stock;

- e) Claimant might not be able to liquidate their positions in Felmont due to the thinness of the market caused by Moreault's purchase of Felmont stock;
- f) Becker considered the need to offer its customers stock in a public or secondary offering; and
- g) The fiduciary standard for investment management is that the portfolio be diversified as to individual companies and industries.

Claimants state that Merrill Lynch Pierce Fenner & Smith, Inc.; Merrill Lynch Money Markets, Inc; and Merrill Lynch & Co. ("Respondents") are named as Respondents as a result of the purchase of Becker and their status as successors in interest to Becker.

In their Answer, filed with the NASD on or about May 17, 1989, Respondents denied the allegations of Claimants and asserted the following affirmative defenses: the claim failed to state a claim upon which relief can be granted; ratification; estoppel; doctrine of waiver; assumption of the risk; and failure to mitigate.

RELIEF REQUESTED

Claimants requested an award of fraud damages in the total amount of \$1,132,003.00; actual damages in the total amount of \$1,132,003.00; exemplary damages in the amount of \$1,132,003.00; interest of not less than 8% per annum from the dates of purchase; costs and attorney's fees.

Respondents requested that the Statement of Claim be dismissed in its entirety and that costs, expenses and attorney's fees be awarded.

OTHER ISSUES

After considering the arguments presented on behalf of the parties, the panel determined that the doctrine of collateral estoppel did not apply to this proceeding. The panel also granted Respondent's motion to exclude testimony of other customers after considering the arguments presented on behalf of the parties.

After the conclusion of the presentation of the Respondents case in chief, Claimants requested that the claim be amended to include relief for alleged unauthorized transactions in stocks other than Felmont and presented testimony as to damages. After considering the arguments of the parties, the panel determined that it would not consider the evidence or make a determination regarding the alleged unauthorized transactions.

PROCEDURAL MATTERS

On Wednesday, May 22, 1991, Thursday, May 23, 1991, and Friday, May 24, 1991 in Denver, Colorado during a hearing lasting a total of eight (8) sessions, including one pre-hearing conference, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to

arbitration signed on November 22, 1988 by Allan R. Koretz, individually, as custodian for Robert A. Koretz, Richard J. Koretz and Ronald W. Koretz and on behalf of Claimants Rags Investors, Riverside No. 5 Partners and Riverside No. 10 Partners.

Respondent Merrill Lynch Pierce Fenner & Smith, Inc. did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and offered testimony at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Respondents Merrill Lynch Money Markets, Inc. and Merrill Lynch and Co. did not file with the NASD properly executed submissions to arbitration, having answered the claim, appeared at the hearing and presented their defense are bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies and to the receipt of conformed copies of the award while the original(s) remain on file with the NASD.

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. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Merrill Lynch Money Markets, Inc. and Merrill Lynch and Co. shall be and hereby are jointly and severally liable for and shall pay to the Claimant Allan R. Koretz, individually and d/b/a Rags Investors the sum of Five Hundred Ninety Two Thousand Eight Hundred Sixty Three Dollars (\$592,863.00) which sum includes interest and attorneys fees;
2. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Merrill Lynch Money Markets, Inc. and Merrill Lynch and Co. shall be and hereby are jointly and severally liable for and shall pay to the Claimant Riverside Partners No. 5 the sum of One Hundred Seventy Eight Thousand Nine Hundred Seventy Dollars (\$178,970.00) which sum includes interest;
3. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Merrill Lynch Money Markets, Inc. and Merrill Lynch and Co. shall be and hereby are jointly and severally liable for and shall pay to the Claimant Riverside Partners No. 10 the sum of Eight Hundred Eighty Nine Thousand Five Hundred Seventeen Dollars (\$889,517.00) which sum includes interest;

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4. The claims asserted on behalf of the custodial accounts of Robert A. Koretz, Richard J. Koretz and Ronald W. Koretz shall be and hereby are dismissed;
5. No punitive damages are awarded herein; and
6. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants, and Claimant Allan R. Koretz shall be and hereby is liable for and shall pay to the NASD the sum of \$3,250.00 as forum fees. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Merrill Lynch Money Markets, Inc. and Merrill Lynch and Co. shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$4,000.00 as forum fees.

Dated:

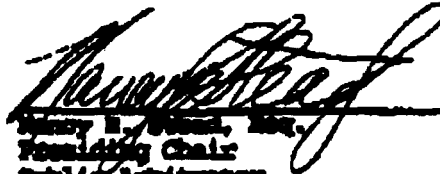
Nancy E. Stead, Esq.
Presiding Chair
Public Arbitrator

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4. The claims asserted on behalf of the custodial accounts of Robert A. Kozets, Richard J. Kozets and Ronald W. Kozets shall be and hereby are dismissed;
5. No punitive damages are awarded herein; and
6. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants, and Claimant Allen R. Kozets shall be and hereby is liable for and shall pay to the NASD the sum of \$3,250.00 as forum fees. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Merrill Lynch Money Markets, Inc. and Merrill Lynch and Co. shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$4,000.00 as forum fees.

Dated:

June 17, 1991


Henry H. Gould, Sr.
Founding Chair
Public Arbitrator