

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

David Schenker

89-00128

Name of Respondent(s)

Merrill Lynch, Pierce, Fenner & Smith  
James Goff

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REPRESENTATION

For Claimant: Christopher L. Burton, Esq. and James W. Peters, Esq. of Jones, Waldo, Holbrook & McDonough, Salt Lake City, Utah.

For Respondents: Dennis M. Pape, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed January 10, 1989.

Claimant's Submission Agreement signed on December 31, 1988.

Statement of Answer filed by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and Respondent James Goff on April 18, 1989.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed on April 18, 1989 by Dennis M. Pape.

Respondent James Goff's Submission Agreement signed on April 19, 1989.

HEARING INFORMATION

Hearing Dates/Sessions: June 5, 1991 and June 6, 1991/Five (5) sessions.

Hearing Location: Chicago, Illinois

CASE SUMMARY

Claimant David Schenker ("Schenker") alleged that Respondent James Goff ("Goff"), while employed by or acting as an agent for Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), made material

misrepresentations and/or omissions regarding the risks involved in trading naked "puts" and "calls" in order to induce him to invest in these types of transactions which were not suitable for his known goals of preservation of capital and capital appreciation, his age and life situation. Schenker further alleged that Respondents engaged in trades in his account which were excessive in size and frequency, designed for the generation of commissions and contrary to Schenker's best interests and financial well being. In addition, Schenker alleged that the account was improperly supervised. Based upon the above allegations, Schenker asserted violations of several provisions of the NASD Rules of Fair Practice.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and James Goff denied each and every allegation of wrongdoing and liability set forth in the Statement of Claim, alleging that: 1) Schenker was an experienced options trader having been actively trading since approximately October of 1973; 2) Schenker completed and signed all option information forms sent by Merrill Lynch, which included paragraphs explaining the high degree of risk associated with options trading; 3) The majority of transactions made were unsolicited trades entered by Schenker based upon his own research; and 4) Schenker received all statements showing the monthly account activity and never disclosed that he was having difficulty understanding them.

#### RELIEF REQUESTED

Claimant David Schenker requested entry of an award against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and James Goff in the amount of \$470,000.00 or such greater amount would be proved at hearing.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and James Goff requested that the Statement of Claim be dismissed and that costs be assessed against Claimant.

#### AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD;
2. The Statement of Claim is hereby dismissed and denied in its entirety;
3. All parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

The National Association of Securities Dealers, Inc. retain as forum fees the \$750.00 filing fee previously deposited with the NASD by the Claimant David Schenker. Claimant David Schenker is liable for and shall pay to the NASD additional forum fees in the amount of \$1,125.00. In addition, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to the NASD additional forum fees in the amount of \$1,875.00.

Fees are payable to the National Association of Securities Dealers, Inc.

**ARBITRATION PANEL**

Dated:

Arthur Medow, Esq.  
Arthur Medow, Esq.  
Chairperson  
Public Arbitrator

7-24-91

William T. White, Jr.  
William T. White, Jr.  
Public Arbitrator

7-30-91

J. T. Martin  
J. T. Martin  
Industry Arbitrator

7-23-91

Date Served: August 6, 1991