

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Maurine H. Pennington

89-00142

Name of Respondent(s)

Merrill Lynch, Pierce, Fenner & Smith
Nicholas F. Stafford

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NATIONAL ASSOCIATION OF
SECURITIES DEALERS

CASE SUMMARY

In a claim filed with the NASD on or about January 23, 1989, Maurine Pennington ("Claimant") alleged that Merrill Lynch, Pierce, Fenner & Smith, Inc. and Nicholas Stafford ("Respondents"): recommended to Claimant and purchased for Claimant's account securities which were unsuitable to Claimant's investment objectives and financial situation for the purpose of generating commissions; and, acted fraudulently, negligently and in breach of their fiduciary duties to the Claimant. Claimant also asserted that Respondents misrepresented material facts in connection with securities purchased for Claimant's account. In addition, Claimant alleged that Respondent, Nicholas Stafford, effected all of Claimant's transactions without her knowledge and consent, and that Respondents acted in violation of RICO.

In answers filed by the Respondents with the NASD, both Respondents denied all allegations of wrongdoing asserted by the Claimant and asserted that: Claimant was a knowledgeable investor and aware of all trading done in her account; Claimant's claims are barred by the doctrines of estoppel, waiver and ratification; Merrill Lynch, Pierce, Fenner and Smith acted in good faith; and, Claimant failed to exercise due diligence under the circumstances which give rise to this proceeding. Furthermore, Respondent, Merrill Lynch, Pierce, Fenner & Smith, brought a counterclaim against Claimant for recovery of a debt which results from a deficit in Claimant's account. Claimant denied it owes the amount asserted in the counterclaim.

PROCEDURAL SUMMARY

Prior to the hearing, Claimant advised the NASD that all claims against Merrill Lynch, Pierce, Fenner & Smith had been settled amicably.

RELIEF REQUESTED

Claimant requested actual damages in excess of \$314,000.00, punitive damages in excess of \$500,000.00, attorney's fees in excess of \$25,000.00 along with interest and expenses of arbitration.

Respondent Merrill Lynch, Pierce, Fenner & Smith requested in its counterclaim, actual damages in the sum of \$75,000.00, attorney's fees and costs.

AWARD

On October 18th and 19th, 1990 in Dallas, Texas during a hearing lasting a total of four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on April 14, 1989 by Claimant Maurine Pennington on July 13, 1989 by Michael S. Stewart on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith and on September 15, 1989 by Respondent Nicholas Stafford.


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. Respondent, Nicholas Stafford, is liable for and shall pay to Claimant, Maurine Pennington, damages in the amount of Eighteen Thousand Dollars (\$18,000.00);
2. There is no award of interest, attorney's fees or punitive damages.

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 Claimant. Claimant is also assessed \$1,125.00 in forum fees. Respondent is assessed \$1,875.00 in forum fees.

Arbitrator(s) Signature

Dated: 11/6/90

S/S 
Daniel L. Jackson, CPA

Dated: _____

S/S _____
David Glatstein
Presiding Chair

Dated: _____

S/S _____
Harold E. Vanberg, Jr., Esq.

Date Served by NASD: 11-20-90

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Dated: _____

S/S _____
Daniel L. Jackson, CPA

Dated: _____

S/S _____
David Glatstein
Presiding Chair

Dated: 4/8/90

S/S _____

Harold E. Vanberg, Jr., Esq.

Date Served by NASD: _____

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Daniel L. Jackson, CPA

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S/S _____
David Glatstein
Presiding Chair

Dated: _____

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Harold E. Vanberg, Jr., Esq.

Date Served by NASD: _____