

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between)

EDWARD B. AND BETTIE L. BOYER,)

Claimants,)

CASE #89-00286
AWARD

vs.)

MERRILL LYNCH, PIERCE, FENNER &)
SMITH, INC. and JOHN C. NEWSOM,)

Respondents,)

Heard before the members of the Arbitration Panel:

Arthur J. Leibell, Esq.

Mr. Paul Roquet

Ms. Barbara Dinaburg

CASE SUMMARY

This claim was filed with the NASD, Inc. on January 30, 1989. The hearing was conducted in Fort lauderdale, Florida on July 30th, 1990 and August 3, 1990, with a total of four (4) sessions.

Claimants, Edward and Bettie Boyer ("the Boyers"), alleged that Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and John Newsom ("Newsom"), were liable for: negligence; breach of fiduciary duty; and, as it relates to Merrill, negligent supervision. Claimants alleged that Newsom's recommendations that they sell their fixed income funds and reinvest in equity funds and C.D.'s were not suitable at the time they were made in September, 1987.

Respondents denied liability and alleged that: Claimants understood how the commission would be charged; Newsom advised Claimants not to change their investment strategy; Claimants wanted to take more risks; the proximate cause of the losses was not the result of any negligence or breach of fiduciary duties by Respondents; Claimants were advised of the risks involved and failed to state a claim; and Respondents acted in good faith. Respondents also denied making the recommendations in question and alleged that the trades were unsolicited.

RELIEF REQUESTED

Claimants requested damages in the amount of \$250,000.00 plus interest, costs and such other relief as the Panel deems appropriate. Respondents requested dismissal of the claim.

AWARD

On July 30th, 1990 and August 3, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on January 26, 1989, and by Respondents, Merrill, on May 9, 1989 and Newsom on May 23, 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 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 may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondents, Merrill and Newsom, are not liable and, therefore, the Claims against them are hereby dismissed.
3. Pursuant to Section 43 of the NASD Code of Arbitration Procedure, the arbitrators have assessed Claimants forum fees in the amount of Three Thousand and 00/100 (\$3,000.00) Dollars, (\$750.00 x 4 sessions) for which they shall be jointly and severally liable. The NASD shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimants in partial satisfaction of such forum fees.

4. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Arthur J. Leibell, Esq.
Mr. Paul Roquet
Ms. Barbara Dinaburg

Dated: August 15, 1990