

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
425 California St., Rm. 1400
San Francisco, CA 94104
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— In the Matter of the Arbitration Between

Name of Claimants

Dale T. Melgaard
Marina R. Melgaard

89-00960

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
James A. Perez

SUMMARY OF ISSUES

Claimants alleged that Respondents placed them in unsuitable investments namely, options; churned their accounts; violated Rule 405 of the New York Stock Exchange and Rule II of the National Association of Securities Dealers, Inc.'s (NASD) Rules of Fair Practice; breached their fiduciary duty to Claimants; failed to disclose the risks of option trading and made material misrepresentations and omissions. Claimants also alleged inadequate supervision by Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. (Merrill Lynch) over the activities of Respondent James A. Perez.

Respondents asserted that the claims should be dismissed as time barred. Respondent Merrill Lynch denied each of the Claimants' allegations and asserted that Claimants were knowledgeable investors and authorized, directed, ratified and participated in the unsolicited transactions in their accounts; that the accounts were properly handled in accordance with Claimants' instructions and investment objectives; and that it exercised the appropriate level of supervision based on the information available as reflected in the account documents and trading records, and acted in accordance with the applicable rules governing its conduct.

Respondent James A. Perez denied the allegations and maintained that all investments and transactions were fully discussed with and authorized by Claimants; that Claimants had complete control over the accounts and made all decisions regarding the trading done in the accounts; and that all risks were appropriately and timely made known to Claimants.

DAMAGES AND RELIEF REQUESTED

Claimants requested damages as amended at the hearing of \$26,980.47 plus interest, punitive damages, attorneys fees and costs.

Respondents requested dismissal of the claims as time barred and/or in the alternative dismissal of the claims on the merits and costs.

DAMAGES AND RELIEF AWARDED

— On July 31, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on November 27, 1989, by Respondent Merrill Lynch on January 12, 1990 and by Respondent James A. Perez on January 23, 1990. The hearing was conducted in San Francisco, California and lasted two sessions. 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 submitted for determination as follows:

1. Respondents' motion to dismiss the action as time barred is denied.
2. Respondents are jointly and severally liable and shall pay to the Claimants the sum of Thirty Six Thousand Five Hundred and Seventy Three Thousand Dollars and No cents (\$36,573.00) inclusive of interest.
3. The claim for punitive damages is denied.
4. The claim for attorney's fees is denied.
5. The parties shall each bear their respective costs.
6. Respondent Merrill Lynch is liable for and shall pay to the Claimants the sum of \$750.00 for the filing fee previously paid by the Claimants.
7. In accordance with Section 43 of the NASD Code of Arbitration procedure, the NASD shall refund the \$750.00 filing fee previously deposited by the Claimants. In addition, Respondent Merrill Lynch is assessed fees of \$750.00 for forum fees payable to the NASD, Inc.

OTHER ISSUES

The parties stipulated to the execution and service of hte Award in counterpart copies.

Arbitrators Signature

— Kathleen H. Casey
Kathleen H. Casey

DATE SERVED: 09/13/90

Mary Karen Ison

Andrew R. Epstein