

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

GERALDINE A. BRIJA & LINDA A. WEAVER,
JTWROS

Claimant

89-01039

and

MERRILL LYNCH, PIERCE, FENNER &
SMITH, INC. & C ERIKA KOMARCK

Respondents

REPRESENTATION OF PARTIES

Claimants Geraldine A. Brija and Linda A. Weaver appeared pro se.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and C. Erika Komarck were represented by Peter A. Cantwell, Esq and Paul H. Schaurlein, Esq. of Cantwell & Balonick, Chicago, Illinois.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about March 20, 1989. Claimants Geraldine A. Brija and Linda A. Weaver ("Claimants") alleged that \$30,000 was invested in October of 1987 through Respondents C. Erika Komarck and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondents"). Claimants alleged that Respondent Komarck told them that they could make more than \$2,000 annually by selling Enron Corporation stock and investing the proceeds elsewhere. Respondent Komarck allegedly suggested that the proceeds be split into 3 other investments. Claimants alleged that one third was invested in Arvida Limited Partnership; one third in Merrill Lynch Basic Value Fund and one third in ten municipal bonds. Claimant alleged that the Arvida prospectus and Respondent Komarck indicated that quarterly distributions of 15 - 20% could be expected over the first five years. Claimant alleged that the first check did not arrive in December of 1987 at which time she was told by her new account representative that the checks would start in March of 1988. Claimants never received these checks and only later learned that they did not own an interest in Arvida but in fact owned something called ML/EQ which stands for Merrill Lynch/Equitable. Claimant alleged this was not the investment described to her and that she never should have invested in it since the goal of her investment was cash distributions. Claimant alleged that cash distributions do not begin for five years in the ML/EQ investment. Claimant further alleged that she would expect 20% return on the Merrill Lynch Basic Value Fund and only received 7% return. Claimant alleged there was a delay in liquidation of this investment of more than 7 days from placing the order.

In a joint Statement of Answer filed with the NASD on or about June 14, 1989. Respondents Merrill Lynch and Komarck alleged that the Claimants were advised to diversify their investments. Respondents alleged that the real estate limited partnership, Merrill Lynch Basic Value Fund and municipal investment trust that were each thoroughly discussed with Claimant, prospectuses were provided for her review and that all final investment decisions were made by Claimant. Respondents alleged that Claimant specifically requested each investment and that trade confirmations and prospectuses were mailed and received by Claimant without protest. Respondents asserted that Claimant never informed them that the Enron stock was providing \$2,000 per year dividends. Respondents alleged that it was not until sometime following Komarck's departure from Merrill Lynch that Claimants inquired about cash distributions from the Merrill Lynch Equity Real Estate Limited Partnership. Respondents alleged that claimant was not told that she could expect a 20% annual return on her investment in Merrill Lynch Basic Value Fund. Further Respondents alleged that Claimant's distribution equalled a 10% annual return which is greater than that claimed in the Statement of Claim.

Respondents alleged that no discretion was taken in Claimant's account, no misrepresentations were made to Claimant and that the check for the sale of the Merrill Lynch Value Fund was only 3 days late. Additionally, Respondents alleged that Claimants ratified all transactions in their account by receiving confirmations and failing to repudiate the trades.

RELIEF REQUESTED

Claimants requested return of the principal invested in a limited partnership plus interest at 20% per month, interest on her mutual fund totalling \$16,490.00 plus punitive damages of \$83,510.00. Respondents requested dismissal of the claim in all respects with costs of the proceeding assessed to Claimants.

PROCEDURAL MATTERS

On July 24, 1991 in Chicago, Illinois during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on February 24, 1989 by Claimants Geraldine Brija and Linda Weaver, on May 23, 1989 by George A. Schieren on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and on July 24, 1991 by Respondent C. Erika Komarck.

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 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. Claimant shall assign to Merrill Lynch any and all interest she owns in ML/EQ Real Estate Portfolio, L.P. In return for the assignment of this beneficial interest, Merrill Lynch is liable for and shall pay to Claimants Geraldine Brija and Linda Weaver Ten Thousand One Dollar and Eighty Five Cents (\$10,001.85);

2. Interest at the rate of 9% per annum, less the sum of \$226.35 is assessed on the above sum from October 29, 1987 to and inclusive of the date the award is paid;

3. All other claims against Merrill Lynch including the claim for punitive damages shall be and are hereby specifically dismissed;

4. Claimants claims against Komarck shall be and are specifically denied and dismissed in their entirety;

5. The parties shall each bear their own costs, expenses and attorney's fees; and

6. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee and refund the hearing session deposit in the amount of \$350.00 previously deposited with the NASD by the Claimants. Merrill Lynch is assessed and shall pay to the NASD the sum of \$1,000.00 as forum fees in this matter.

Dated:

July 24, 1991

S/S John E. Cloney
Presiding Chair
Public Arbitrator

July 24, 1991

S/S Howard Z. Gopman
Public Arbitrator

July 24, 1991

S/S J. T. Martin
Industry Arbitrator

Date Served by NASD: July 31, 1991