

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

MARJORIE A. BRANN

Claimant

and

MERRILL LYNCH, PIERCE, FENNER &
SMITH, SMITH BARNEY, HARRIS, UPHAM
& CO., INC. et al.

Respondents

CASE NO. 89-01058

CASE SUMMARY

In a claim filed with the NASD on April 7, 1989, Claimant Marjorie Brann alleged as follows: that she opened an account with Respondent Merrill Lynch Pierce, Fenner & Smith, Inc. in January, 1987; that her account executive was Respondent L. Ann Weber; that she had informed Respondent Weber that her investment objectives were growth and income; that contrary to those stated investment objectives, Respondent Weber had purchased interests in limited partnerships and a single premium insurance product; that in April, 1987, Respondent Michael O'Shaughnessey became her account executive after Respondent Weber had left the employ of Merrill Lynch; that Michael O'Shaughnessey took no action to correct the problems in her account; that in July, 1987 Claimant transferred her account to Respondent Smith Barney, Harris, Upham & Co., Inc. where Respondent Weber was then employed; that Respondent Weber continued to trade speculative long-term low income, slow growth securities; that in November, 1987, Respondent Theodore Bast became her account executive; that Theodore Bast took no action to correct the problems in her account; that in May, 1988, Respondent William Gray became the account executive for her account; that William Gray took no action to correct the investment programs initiated by Respondent Weber.

In its answer filed with the NASD on or about June 17, 1989 Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. denied the allegations and stated that all transactions made in Claimant's account were made with the Claimants authorization and after extensive discussions with Claimant. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. further stated that Claimant had purchased the single premium insurance product after attending a seminar to discuss the product where Claimant asked questions regarding the product.

In his answer filed with the NASD on June 17, 1989, Respondent Michael O'Shaughnessey stated that no action was required and that he had requested that Claimant meet with him to discuss her account and she did not.

In their joint answer filed with the NASD on June 26, 1989, Respondents Smith Barney, Harris, Upham & Co., Inc. ("Smith Barney") and William Gray stated that all transactions made in the account of Claimant while the account was at Smith Barney were made after full disclosure of all material facts were made to Claimant and with Claimant's authorization.

In his answer filed with the NASD on July 17, 1989, Respondent Theodore Bast stated that all transactions made in the account of Claimant while he was the account executive for the account were made at the request of Claimant after full disclosure was made to Claimant and with the Claimant's authorization.

In her answer dated July 9, 1989 Respondent L. Ann Weber states that she informed the Claimant of all risks pertaining to the investments purchased in her accounts and transactions were made pursuant to the Claimant instructions.

RELIEF REQUESTED

Claimant requested unspecified compensatory damages with interest; exemplary damages; reimbursement of costs of this proceeding and attorneys fees. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested that the Statement of Claim be denied. Respondent Michael O'Shaughnessey requested that the Statement of Claim be denied. Respondents Smith Barney, Harris, Upham & Co., Inc. and William Gray requested that the Statement of Claim be denied and that the Claimant be assessed costs. Respondent Theodore Bast requested that the Statement of Claim be denied and that the Claimant be assessed attorneys fees. Respondent L. Ann Weber requested that the Statement of Claim be denied.

AWARD

On Thursday, December 21, 1989, and Friday, January 19, 1990 in Indianapolis, Indiana during a hearing lasting four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 30, 1989 by Claimant Marjorie A. Brann, on June 26, 1989 by Fred D. Bostelman, Administrative Manager on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., on July 19, 1989 by Respondent Michael O'Shaughnessey, on June 26, 1989 by Linda C. Alpert on behalf of Respondent Smith Barney, Harris, Upham & Co., Inc., on June 23, 1989 by Respondent William A. Gray, and on or about July 7, 1989 by Respondent L. Ann Weber.

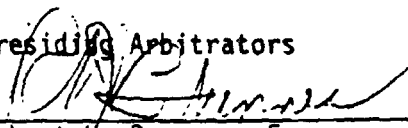
The NASD file did not contain an executed submission agreement on behalf of Theodore C. Bast. Respondent Bast did file an answer to the Statement of Claim and is required to submit to arbitration pursuant to Section 12 of the Code of Arbitration Procedure.

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. The Statement of Claim shall be and hereby is dismissed and denied in its entirety;

2. The Parties shall each bear their respective costs, expenses and attorneys' fees incurred in this matter; and

3. Pursuant to Section 43(b) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$500.00 filing fee previously deposited with the NASD by the Claimant Marjorie A. Brann. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is assessed and shall pay to the NASD the sum of \$500.00 and Respondent L. Ann Weber(Reeder) is assessed and shall pay to the NASD the sum of \$500.00 as forum fees.

Dated: March 1, 1990 /S/ 
Presiding Arbitrators
Robert H. Brunner, Esq.
Presiding Chair

Dated: _____ /S/ _____
Sharon B. Merriman, Esq.

Dated: _____ /S/ _____
Mr. Bernard Lally

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Presiding Arbitrators

Dated: _____

/S/

Robert H. Brunner, Esq.
Presiding Chair

Dated: _____

/S/

Sharon B. Merriman, Esq.

Dated: 3-1-90

/S/

Bernard Lally
Mr. Bernard Lally

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Presiding Arbitrators

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/S/

Robert H. Brunner, Esq.
Presiding Chair

Dated: 3/1/90

/S/

Sharon B. Merriman
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Dated: _____

/S/

Mr. Bernard Lally