

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Abraham Piltch and Helen Piltch

Claimants

vs.

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Paul R. Sweeney, Jr.

Respondents

AWARD  
#89-01957

CASE SUMMARY

Claimants Abraham and Helen Piltch (hereinafter the "Claimants") alleged that Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Paul R. Sweeney, Jr. ("Sweeney") mishandled Claimants' account. Claimants alleged that Claimant Mr. Piltch and Sweeney has developed a strategy for trading options in which Sweeney was to contact Mr. Piltch whenever there was a 10 point market move beyond the Claimants' OEX strike price. Claimants alleged that Respondent Sweeney failed to contact him on Friday, October 16, 1987 although Claimants' three sets of 10 OEX had moved beyond the 10 point limit. Claimants alleged that because of Respondents failure to communicate with them, based upon the agreed upon strategy, Claimants were unable to cut their losses. Claimants alleged that Respondent Merrill Lynch is vicariously responsible for the actions and omissions of Sweeney and for its own failure to supervise Sweeney.

Respondents maintained that they had no discretionary authority and could not close out Claimants' positions without their authorization. Respondents maintained that Sweeney did not have an obligation to contact Mr. Piltch on October 16, 1987 and that it was Claimants' responsibility to cover their open positions. Respondents maintained that once the orders were given on October 19th, 1987 to cover the Claimants' open positions, that those positions were promptly covered.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$110,000.00 plus interest and costs of this action. Claimants also requested punitive damages in the amount of \$100,000.00

Respondents requested that an Award be entered dismissing the Claimants' claim and that Respondents be awarded their costs in this action

AWARD

On June 14, 1990 in the District of Columbia, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Abraham and Helen Piltch on June 9, 1989, and by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on September 14, 1989 and by Respondent Paul R. Sweeney, Jr. on September 14, 1989. The initial claim was filed on July 10, 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 submitted for determination as follows:

1. That the Claimants' claim be and hereby is denied in its entirety.
2. The parties shall each bear their respective costs including attorney's fees.
3. Pursuant to Section 43 of the Code of Arbitration Procedure, the forum fees for the June 14, 1990 double session hearing shall be equally assessed against the Claimants and the Respondents, so that the Claimants are assessed forum fees in the amount of \$500.00; however, the Claimants are entitled to apply their \$500.00 filing fee to this amount of \$500.00. Forum fees shall be made payable to the National Association of Securities Dealers, Inc. through the Staff Attorney.

CONCURRING ARBITRATORS

/s/

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Perry E. Wallace, Jr.

/s/

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Michael Fischetti

/s/

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Alexander Heckman

6. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund/retain the \$500 filing fee previously deposited by the Claimant as costs of the hearing session(s) conducted in this matter.

CONCURRING ARBITRATORS

Robert E. White, Jr.  
Robert E. White, Jr.

Michael F. Fichelli  
Michael F. Fichelli

Alexander H. Hecuman  
Alexander Hecuman

through the  
Staff Attorney.