

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Richard E. Schmid

89-02008

Name of Respondent(s)

Merrill Lynch, Pierce Fenner & Smith Inc

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Heard before the members of the Arbitration Panel:

John B. Kelley, Esq.  
Andrew Bartfay  
Patricia A. Shub, Esq.

CASE SUMMARY

This claim was filed with the NASD, Inc. on July 14, 1989. The hearing was conducted in Fort Lauderdale, Florida, on June 21, June 22 and September 7, 1990, with a total of six (6) sessions.

Claimant, Richard Schmid ("Schmid"), alleged that Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., ("Merrill"), was liable for: unsuitability, misrepresentation; excessive trades; fraud; and failure to supervise. Claimant alleged that Respondent's employee induced him into purchasing stocks and bonds by: misrepresenting the return on investment; failing to advise of the risks of trading on margin; and failing to advise of the risks and limited marketability of a Merrill Lynch limited partnership.

Respondent alleged that: Claimant was not an unsophisticated businessman nor an unsophisticated investor; Claimant's objectives were price appreciation over an intermediate term with some speculation; Claimant never expressed a desire to keep his account in money market instruments and requested the purchase of equity and debt securities; and the account was not discretionary. Respondent asserted the affirmative defenses of: statute of limitations; failure to exercise due diligence; failure to mitigate damages; ratification; waiver; estoppel; laches; assumption of risk; Claimant maintained control over the account; churning is not actionable under the theories of liability asserted; and Claimant is not entitled to, and has failed to state a cause of action for, punitive damages.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$276,505.00 plus interest, costs, attorney's fees. Respondent requested dismissal of the claim plus costs.

#### AWARD

On June 21, June 22 and September 7, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on August 4, 1989, and by Respondent on November 13, 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. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a hand written 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. Respondent Merrill is hereby liable and shall pay to Claimant-the amount of One Hundred Seventy Five Thousand and 00/100 (\$175,000.00) Dollars inclusive of interest.
3. Claimant's request for costs and attorneys' fees is hereby dismissed in all respects.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of Four Thousand Five Hundred and 00/10 (\$4,500.00) Dollars, Seven Hundred Fifty and 00/100 Dollars (\$750 x 6 sessions). Respondent Merrill is assessed forum fees in the amount of Four Thousand Five Hundred and 00/100 (\$4,500.00) Dollars, Seven Hundred Fifty and 00/100 (\$750.00) Dollars of which shall be paid to the Claimant as a return of his filing fee. The National Association of Securities Dealers, Inc., shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee previously deposited by the Claimant with the NASD, Inc., in partial satisfaction of such forum fees.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorneys' fees.

#### OTHER ISSUES

None.

ARBITRATORS CONCURRING

/s/  
John B. Kelley, Esq.

/s/  
Andrew Bartfay

/s/  
Patricia A. Shub, Esq.

Dated: October 5, 1990