

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Patricia M. Cypher

89-02035

Name of Respondent(s)

Merrill Lynch, Pierce Fenner & Smith Inc
Tracy R. Turner

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on July 17, 1989. Claimant alleged Respondents breached their agreement with her and breached their duty of reasonable care by actions including placing her in unsuitable investments (puts, stocks) and the use of margin. Respondents denied that Claimant was placed in unsuitable investments. Respondents alleged that her account was handled in a manner consistent with the objectives she discussed with Respondent Turner and that Claimant's failure to act to stop the manner in which her account was handled demonstrates her approval and precludes her claims on grounds of ratification or waiver.

DAMAGES AND RELIEF REQUESTED

Claimant requested an award: (1) for general damages according to proof; (2) for punitive damages according to proof; (3) for costs of arbitration; and (4) for such other and further relief as deemed just and proper. Respondents requested that all costs be assessed against Claimant and that Respondents be awarded just sanctions.

DAMAGES AND RELIEF AWARDED

On October 9 and 10, 1990 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant July 3, 1989, and by Respondent Merrill, Lynch, Pierce, Fenner and Smith on October 10, 1989 and by Respondent Turner on April 10, 1990.

The hearing was conducted in San Francisco, California and lasted six 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. Based on the unsuitable investments and use of margin, Respondent Merrill, Lynch, Pierce, Fenner and Smith is solely liable for and shall pay to Claimant the sum of Twelve Thousand Six Hundred Thirty-Nine Dollars and Seventy-Eight Cents (\$12,639.78), computed as follows:
 - a. The total net loss of Eight Thousand Nine Hundred Sixty-One Dollars and No Cents (\$8,961.00) as a result of put transactions.

plus
 - b. The total net loss of Two Hundred Seventy-One Dollars and No Cents (\$271.00) from the use of margin,

plus
 - c. Interest from February 1, 1987 (the medium from the first to last transactions in puts) until October 10, 1990, on the total net loss (put loss and margin loss), in the amount of Three Thousand Four Hundred Seven Dollars and Seventy-Eight Cents (\$3,407.78).
2. Respondent Merrill, Lynch, Pierce, Fenner and Smith is solely liable for reimbursing Claimant her costs in the amount of One Thousand Seventy-Five Dollars and Fifty-Three Cents (\$1,275.53).
3. Claimant's request for an award of punitive damages is denied.
4. Claimant's request for an award of attorney's fees is denied.
5. Each and every claim against Respondent Turner is dismissed.

In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$500.00 filing fee previously deposited by the Claimant [as an assessment of forum fees by the arbitrators]. In addition, Respondent Merrill, Lynch, Pierce, Fenner and Smith is also assessed fees of \$2,500.00 for forum fees, to be made payable directly to the National Association of Securities Dealers.

Arbitrator(s) Signature


Thomas E. Mulvihill

Rudy E. Thorwirth

Sheila Gropper Nelson