

• ASD

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
Suite 1680
Three First National Plaza
Chicago, IL 60602
(312) 899-4440

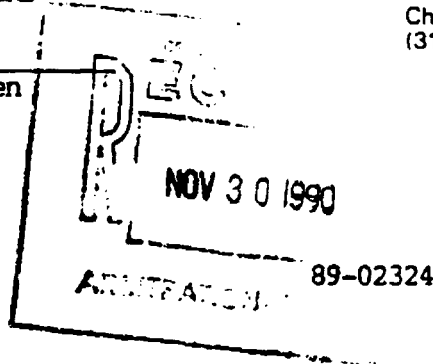
In the Matter of the Arbitration Between

Name of Claimant(s)

Thomas G. Hallal

Name of Respondent(s)

Merrill Lynch, Pierce Fenner & Smith Inc.
James Porz



CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on August 18, 1989, Claimant Thomas G. Hallal alleged that Respondents misrepresented the commissions paid on a bond fund purchased by the Claimant by stating that the fund was a "no-load" fund and failing to mention a rear-end load. In addition, Claimant alleges that he ordered the liquidation of the fund in April of 1987 and Respondents failed to execute his order until November of 1987.

In a Statement of Answer filed with the NASD on December 26, 1989, Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and James Porz denied the material allegations of wrongdoing, stating that Claimant was aware that the fund would charge a sales charge, known as a "rear-end load", on a declining basis for early liquidation and that a prospectus identifying this charge was mailed to Claimant on the same or the following day as the purchase. In addition, Respondents allege that Claimant failed to mitigate damages due to his failure to carefully review his account statements for the period after he directed Respondents to sell the fund.

RELIEF REQUESTED

Claimant Thomas G. Hallal requested that an award be entered against Respondents in the amount of \$53,794.42 plus interest, attorneys' fees and costs.

Respondent Merrill Lynch, Pierce; Fenner & Smith, Inc. and James Porz requested that the Statement of Claim be dismissed and denied in its entirety.

NASD

National Association of
Securities Dealers, Inc.
Suite 1680
Three First National Plaza
Chicago, IL 60602
(312) 899-4440

AWARD

On August 30, 1990 in Chicago, Illinois during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on August 9, 1989 by Claimant Thomas G. Hallal, on November 9, 1989 by V. James Mann on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and on November 14, 1989 by Respondent James Porz. At the close of hearing, the arbitrators requested that the parties submit post-hearing briefs containing the parties closing arguments and legal authority.

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. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to Claimant Thomas G. Hallal the sum of \$53,794.42 plus interest in the amount of \$15,690.04;

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is also liable for and shall pay to Claimant Thomas G. Hallal the sum of \$12,500.00 as attorneys' fees. In determining to award attorneys' fees to Claimant, the panel considered the federal authorities cited and the arguments set forth by the parties in addition to Ill. Rev. Stat. Ch. 121-1/2, par. 137.12(A) and determined that authority existed for an award of attorneys' fees in favor of Claimant.

3. The Statement of Claim against Respondent James Porz is hereby dismissed and denied in its entirety.

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$150.00 filing fee and \$350.00 hearing session deposit previously deposited with the NASD by the Claimant Thomas G. Hallal. Claimant Thomas G. Hallal is liable for and shall pay to the NASD additional forum fees of \$150.00. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to the NASD additional forum fees of \$500.00.

By the Panel

Dated: _____ /S/

Robert L. Agosto, Esq.
Presiding Chair

NOV 29 1990

Dated: _____ /S/

Mary Beth Wheeler, Esq.

Dated: NOV 27 1990

/S/ John K. Diederichs, Esq.

CHICAGO

National Association of
Securities Dealers, Inc.
Suite 1680
Three First National Plaza
Chicago, IL 60602
(312) 899-4440

AWARD

On August 30, 1990 in Chicago, Illinois during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on August 9, 1989 by Claimant Thomas G. Hallal, on November 9, 1989 by V. James Mann on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and on November 14, 1989 by Respondent James Porz. At the close of hearing, the arbitrators requested that the parties submit post-hearing briefs containing the parties closing arguments and legal authority.

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. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to Claimant Thomas G. Hallal the sum of \$53,794.42 plus interest in the amount of \$15,690.04;

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is also liable for and shall pay to Claimant Thomas G. Hallal the sum of \$12,500.00 as attorneys' fees. In determining to award attorneys' fees to Claimant, the panel considered the federal authorities cited and the arguments set forth by the parties in addition to Ill. Rev. Stat. Ch. 121-1/2, par. 137.12(A) and determined that authority existed for an award of attorneys' fees in favor of Claimant.

3. The Statement of Claim against Respondent James Porz is hereby dismissed and denied in its entirety.

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$150.00 filing fee and \$350.00 hearing session deposit previously deposited with the NASD by the Claimant Thomas G. Hallal. Claimant Thomas G. Hallal is liable for and shall pay to the NASD additional forum fees of \$150.00. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to the NASD additional forum fees of \$500.00.

By the Panel

Dated: November 26, 1990 /S/

Robert L. Agosto, Esq.
Presiding Chair

Dated: _____ /S/

Mary Beth Wheeler, Esq.

Dated: _____ /S/

John K. Diederichs, Esq.

National Association of
Securities Dealers, Inc.
Suite 1680
Three First National Plaza
Chicago, IL 60602
(312) 899-4440

AWARD

On August 30, 1990 in Chicago, Illinois during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on August 9, 1989 by Claimant Thomas G. Hallal, on November 9, 1989 by V. James Mann on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and on November 14, 1989 by Respondent James Porz. At the close of hearing, the arbitrators requested that the parties submit post-hearing briefs containing the parties closing arguments and legal authority.

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. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to Claimant Thomas G. Hallal the sum of \$53,794.42 plus interest in the amount of \$15,690.04;

2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is also liable for and shall pay to Claimant Thomas G. Hallal the sum of \$12,500.00 as attorneys' fees. In determining to award attorneys' fees to Claimant, the panel considered the federal authorities cited and the arguments set forth by the parties in addition to Ill. Rev. Stat. Ch. 121-1/2, par. 137.12(A) and determined that authority existed for an award of attorneys' fees in favor of Claimant.

3. The Statement of Claim against Respondent James Porz is hereby dismissed and denied in its entirety.

4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$150.00 filing fee and \$350.00 hearing session deposit previously deposited with the NASD by the Claimant Thomas G. Hallal. Claimant Thomas G. Hallal is liable for and shall pay to the NASD additional forum fees of \$150.00. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for and shall pay to the NASD additional forum fees of \$500.00.

By the Panel

Dated: _____ /S/ _____
Robert L. Agosto, Esq.
Presiding Chair

Dated: 11-27-90 /S/ Mary Beth Wheeler
Mary Beth Wheeler, Esq.

Dated: _____ /S/ _____
John K. Diederichs, Esq.