

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Timothy R. Burdue, W.L. Burdue Claimants
and Rose M. Burdue, JTWROS

vs.

Merrill Lynch, Pierce, Fenner & Respondents
Smith, Inc. and Stephen J. Duffy

AWARD

CASE NO. 89-02656

Heard Before the Members of the Arbitration Panel:

Bert Levy

SUMMARY OF ISSUES

This case was filed on September 25, 1989. Claimants alleged that they deposited monies into a Cash Management Fund with Merrill Lynch, that Respondents made misrepresentations to Claimants, placed Claimants' funds in a bond fund without Claimants' authorization and without advising Claimants of the risks and without providing them with a prospectus. Claimants also alleged that Respondents breached the implied covenant of good faith and fair dealing implicit in their contract with Claimants by failing to act in a fair and reasonable manner with Claimants with regard to their claim for reimbursement for lost deposits. Respondents denied all, and all allegations of wrongdoing or liability in the claim for damages. Respondents alleged that Claimants made an informed investment decision, that Claimants were free to sell their investment at any time, that Claimants were advised when the investment was in a profit situation and Claimants chose to sell the investment when they did thus realizing a previously unrealized loss. Respondents asserted six affirmative defenses.

DAMAGES AND RELIEF REQUESTED

Claimants requested \$9,104.00 plus prejudgment interest. Respondents requested that Claimants' claim for damages be denied and that the cost of this proceeding be assessed against Claimants.

DAMAGES AND RELIEF AWARDED

On March 20, 1990 in Los Angeles, California, the arbitrator heard the controversy in one session between the parties as set forth in submissions to arbitration signed by Claimants on September 8, 1989, by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on December 14, 1989 and by Respondent Stephen J. Duffy on December 1, 1989. The arbitrator, 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. Each and every claim of Claimants is dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.
3. In accordance with Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure, the NASD shall retain the \$200.00 filing fee deposited by the Claimant as an assessment of forum fees by the arbitrator.

DATE SERVED: 03/27/90