

Arbitration

©

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

David & Barbara Oliver)

Case No. 89-03197

Name of Respondent(s))

Merrill Lynch, Pierce, Fenner
and Smith Inc.
and Thomas Greenbaum)

Heard before the members of the Arbitration Panel:

Arthur J. Leibell, Esq.
Robert Herschmann, Esq.
Robert Gelfand

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CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on November 15, 1989. Claimants, David and Barbara Oliver ("Olivers"), alleged that Respondents, Merrill Lynch, Pierce, Fenner and Smith Inc. ("ML") and Thomas Greenbaum ("Greenbaum"), made misrepresentation of material facts and omitted to state material facts; took control of the accounts; churned the accounts; made unsuitable and unauthorized trades in equity securities and bonds; failed to follow Claimants' instructions regarding purchases and sales and commingled accounts; wrongfully used Claimants' margin account; that Respondents' actions constituted common law fraud, breach of fiduciary duty, failure to supervise; negligence and mismanagement causing a substantial loss; and, that Respondents' actions caused emotional distress and other economic loss.

In a Statement of Answer filed with the NASD on January 25, 1990, Respondents, ML and Greenbaum, denied all allegations of wrongdoing and alleged that the accounts were managed in a lawful fashion in accord with Claimants' account objectives and instructions; that Claimants intended aggressive and speculative trading except for Ms. Oliver's own account which was to be safer and more conservative; that Mr. Oliver was an experienced sophisticated investor; and, the accounts were profitable to Claimants. Respondents alleged the affirmative defenses of: failure to state a claim; estoppel; ratification; failure to exercise due diligence and recklessness; contributory negligence; and, failure to mitigate damages.

RELIEF REQUESTED

Claimants requested damages in the amount of \$99,000.00, interest, punitive damages in the amount of \$150,000.00, costs and expenses.

Respondents requested dismissal, costs and expenses.

AWARD

On August 14, 1990, (via conference call), October 25 and 26, 1990, and January 31 and February 1, 1991, during a hearing lasting 10 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on September 8, 1989, and by Respondents, ML on January 24, 1990 and Greenbaum, on March 12, 1990.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided 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 handwritten, signed Award 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.
2. Respondents, ML and Greenbaum, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$12,175.00.
3. Claimants' requests for interest, punitive damages, costs and expenses are denied.
4. Respondents' requests for dismissal, costs and expenses are denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$7,500.00 (10 sessions x \$750.00). Claimants are hereby assessed \$3,750.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof. Respondents, ML and Greenbaum, are hereby assessed \$3,750.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceedings.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

None.

Concurring Arbitrator(s) Signature

/s/
Arthur J. Leibell, Esq.

/s/
Robert Herschmann, Esq.

/s/
Robert Gelfand

Date of Decision: February 27, 1991