

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between
Betty Hazelbaker
Claimant
vs.
Merrill Lynch Pierce Fenner
& Smith, Inc. and
Randy Schroeder
Respondents

AWARD
NASD #90-00343

REPRESENTATION

Claimant was represented by Gregg A. Johnson, Esq., of San Diego California. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. was represented by Joseph S. Schuchert, Esq., Kessal, Young & Logan, of Long Beach, California. Respondent Randy N. Schroeder did not file an Answer nor appear at the arbitration hearing.

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on February 1, 1991. Claimant alleged that Respondents breached their respective fiduciary duties, recommended unspecified transactions that were not suitable, and engaged in unspecified transactions that were unauthorized.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. denied the allegations and maintained that Claimant is a sophisticated investor with prior investment experience who was aware of and ratified all transactions in her account. Respondent Merrill Lynch further asserted that Claimant's claims are barred by the applicable statute of limitations.

Respondent Randy N. Schroeder did not file an Answer nor appear at the arbitration hearing.

PROCEDURAL ISSUES

On June 25, 1991 the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on January 31, 1990 and by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on April 24, 1991. Respondent Randy N. Schroeder, duly served with the

Statement of Claim and with all notices concerning the date, time and location of the arbitration hearing, did not sign a Submission Agreement nor appear at the hearing. Respondent Schroeder is subject to the jurisdiction of this arbitration pursuant to Sections 1 and 12 of the Code of Arbitration Procedure and this Award is rendered in accordance with Section 29 of the Code of Arbitration Procedure as if Respondent Schroeder had entered an appearance in the matter submitted.

The hearing was conducted in San Diego, California and lasted three (3) sessions.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages, as amended at the hearing, in the amount of \$24,291.42 for trading losses, \$2,214.76 for margin interest, \$7,407.40 for commissions/mark-ups, \$15,544.49 for interest at ten percent from November 28, 1986, unspecified punitive damages and costs.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested dismissal of the claim in its entirety and costs.

Respondent Randy Schroeder did not file an Answer and did not request any relief.

DAMAGES AND RELIEF AWARDED

The arbitrator, having considered the pleadings, the testimony, the evidence presented at the hearing, and the post-hearing submission, has determined in full and final resolution of the issues submitted as follows:

1. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s motion to dismiss on statute of limitations grounds is denied.

2. Claimant is awarded the sum of Seventeen Thousand, Three Hundred, Thirty-Four Dollars and Zero Cents (\$17,334.00), which includes interest, assessed jointly and severally against Respondents.

3. The claim for punitive damages is denied.

4. The parties shall each bear their respective costs including attorneys' fees.

5. In accordance with Section 43 of the NASD Code of Arbitration Procedure:

a. the NASD shall retain the \$100 filing fee and \$300 hearing session deposit previously paid by the Claimant; and

b. Respondents are jointly and severally assessed the sum of \$500 representing forum fees to be paid to the NASD directly.

OTHER ISSUES

At the conclusion of the arbitration hearing, the arbitrator granted Claimant's request to have the record remain open in order to submit additional evidence in the form of a post-hearing submission. Claimant filed the submission on July 24, 1991 and Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. filed a reply on July 25, 1991.

PRESIDING ARBITRATOR

DATE SERVED: 08/14/91


William R. Newsome