

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Lawrence & Silva Harris

90-00344

Name of Respondent(s)

Merrill Lynch, Pierce Fenner & Smith Inc
Bateman Eichler, Hill Richards, Inc.

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on February 1, 1990.

Claimants Lawrence and Silva Harris (Harris) brought this claim against Respondents Bateman, Eichler, Hill Richards, Inc. (BEHR) and Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill) alleging that Harris purchased certain products offered by Merrill through his account representative at BEHR. The products, Corporate Income Funds, subsequently declined in value causing Harris a loss.

Respondents allege that Claimant made the decision to hold the bond investment and is, therefore, responsible for his own inaction.

DAMAGES AND RELIEF REQUESTED

See attached Statement of Decision

DAMAGES AND RELIEF AWARDED

On November 7 and November 8, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants Lawrence and Silva Harris on January 30, 1990 and by Respondent Bateman, Eichler, Hill Richards, Inc on March 6, 1990 and by Respondent Merrill Lynch, Pierce, Fenner and Smith Inc. on April 18, 1990.

The hearing was conducted in Los Angeles, California and lasted 4 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. Each and every claim of Claimants Lawrence and Silva Harris against Respondents Bateman, Eichler, Hill Richards, Inc. and Merrill Lynch, Pierce, Fenner and Smith, Inc. is dismissed.
2. The parties shall each bear their respective costs including attorneys' fees.
3. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators.

OTHER ISSUES

At the close of the hearing, Claimant, Lawrence Harris, requested that the Arbitration Panel issue a written statement of decision. The panel granted said request and the Statement of Decisions is attached hereto.

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Charles D. Behm

1 NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

2 IN THE MATTER OF THE ARBITRATION BETWEEN

DRAFT

3 Lawrence and Silva Harris,

X

4 Claimants,

X

Case No. 90-00344

5 and

X

X

X

6 Bateman, Eichler, Hill & Richards,
7 and Merrill, Lynch, Pierce, Fenner
& Smith, Inc.,

X

X

X

Hearing Date:

November 7, 8, 1990

8 Respondents.

X

X

X

X

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10 STATEMENT OF DECISION

11 Having heard all of the evidence submitted by the parties
12 and considered all of the arguments made by the parties in the
13 above-referenced matter, the Arbitration Panel finds as follows:
14

15 1. No Award against Bateman, Eichler, Hill & Richards

16 The Arbitration Panel declines to make an award to Lawrence
17 and Silva Harris, against Respondent, Bateman, Eichler, Hill &
18 Richards ("Bateman"). Lawrence Harris ("Claimant") and Bateman
19 largely agree as to the events leading up to his investment in
20 CIF Series 6 and 10. In particular, they agree that Claimant's
21 investment objective was monthly income, they agree that
22 Bateman's Joel Robins first recommended an investment in
23 government securities, and they agree that Claimant rejected that
24 recommendation because he wanted a higher yield. They even agree
25 that Claimant and Joel Robins discussed the increased risk
26 involved in the CIF Series investment. Claimant's contention,
27 that he failed to understand that a higher risk of loss meant a
28

1 higher risk of default on the bonds in the fund, is simply
2 disingenuous. Claimant has failed to prove his contention that
3 material facts were not disclosed to him.

4 2. No Award against Merrill, Lynch, Pierce, Fenner & Smith,
5 Inc.

6 The Arbitration Panel declines to make an award to Lawrence
7 and Silva Harris, against Respondent, Merrill, Lynch, Pierce,
8 Fenner & Smith, Inc. ("Merrill Lynch"). Merrill Lynch's
9 prospectuses fully disclosed the risks inherent in the CIF Series
10 investments. Merrill Lynch's prospectuses fully disclosed that
11 the CIF Series investments were not a managed fund. Further,
12 Merrill Lynch' prospectuses fully disclosed the method by which
13 bonds would be selected for inclusion in the funds, and Merrill
14 Lynch selected the bonds in strict compliance with its announced
15 criteria. In other words, Merrill Lynch did exactly what it said
16 it would do. No fraud was perpetrated by Merrill Lynch.

17
18 3. Conclusion.

19 The Arbitration Panel understands Claimant's frustration
20 with the result of his investment in the CIF Series. Claimant
21 apparently was the victim of rapid market fluctuations. It is
22 clear, however, that Claimant wanted junk bonds, he selected junk
23 bonds against the advice of his own broker, and he bought junk
24 bonds. Neither Respondent can be required to guarantee the
25 results of Claimant's selection. Further, it is significant that
26 Claimant continued to hold the CIF Series investment for almost
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three years, well after the defaults about which he is
complaining.

Charles D. Behm

Charles D. Behm
Panelist