

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

JEAN SOTO, BETTY PONDER, et al

Claimants

and

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.

Respondent

No. 90-00407

REPRESENTATION OF PARTIES

Claimants were represented by Leigh Lasky, Esq. of Biegel and Sandler, Ltd., Chicago, Illinois. Respondent was represented by Donald Littlefield, Esq. of Geary, Stahl & Spencer, Dallas, Texas.

CASE SUMMARY

In a statement of claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about February 8, 1990, Claimants Jean Soto, Betty Ponder, Susan McNamara and William Ponder on behalf of the estate of J. Hart Ponder ("Claimants") alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. made four (4) purchases of illiquid securities in the form of limited partnerships for the account of J. Hart Ponder now deceased on whose behalf this action was brought. Claimants alleged that Merrill Lynch breached its fiduciary duty to the decedent. Claimants requested damages based upon causes of action asserted under section 10(b) of the Securities Exchange Act of 1934 and rule 10(b)5 promulgated thereunder, the Texas Securities Act, common law fraud, breach of fiduciary duty and the Texas deceptive trade practices act.

In a statement of answer filed with the NASD on or about June 27, 1990, Merrill Lynch denied that it fraudulently caused Ponder to purchase or sell securities and denied that it violated the suitability rules of the NASD. Merrill Lynch also denied all other allegations of the claim.

RELIEF REQUESTED

Claimants requested damages of not less than \$500,000, punitive damages, attorney's fees, prejudgement interest and costs of the proceeding. Merrill Lynch requested dismissal of the claim and that an award of its costs and attorney's fees be granted against Claimants.

PROCEDURAL MATTERS

On April 29 and 30, 1991 in Albuquerque, New Mexico during a hearing lasting a total of three (3) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on April 6, 1990 by Claimant Betty Brooks Ponder on January 26, 1990 by Jean Ponder Soto, on April 10, 1990 by Susan Terresa Macnamara, and on June 19, 1990 Michael J. Stewart on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

AWARD

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. All claims asserted against Merrill Lynch by Claimants are and shall be denied and dismissed in their entirety;
2. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter; and

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$250.00 claim filing fee and refund the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants. Merrill Lynch is assessed and shall pay to the NASD \$3,000.00 as forum fees.

Date Signed:

Arbitration Panel

s/s

John M. Eaves
Presiding Chair
Public Arbitrator

7/9/91

s/s

Peter J. Broullire, III
Public Arbitrator

s/s

John E. Bundock
Industry Arbitrator

Date Served by NASD: 7-10-91

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$250.00 claim filing fee and refund the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants. Merrill Lynch is assessed and shall pay to the NASD \$3,000.00 as forum fees.

Date Signed:

7-5-91

Arbitration Panel?

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John H. Eaves
Presiding Chair
Public Arbitrator

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Peter J. Broullins, III
Public Arbitrator

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John E. Bundock
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Date served by NASD:

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Date Signed:

Arbitration Panel

s/s _____
John M. Eaves
Presiding Chair
Public Arbitrator

s/s _____
Peter J. Broullire, III
Public Arbitrator

7/8/91

s/s *John E. B. Baddock*
John E. Baddock
Industry Arbitrator

Date Served by NASD: 7-10-91