

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Seymour & Sybil Robinson

90-00446

Name of Respondent(s)

Merrill Lynch, Pierce Fenner & Smith Inc
Edward Marks

REPRESENTATION

Claimants Seymour and Sybil Robinson were represented by Graham Clark, Esq. of Mahoney & Hagberg, Minneapolis, Minnesota.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edward Marks were represented by J. David Montague, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: February 12, 1990

Claimants Seymour and Sybil Robinson's Submission Agreement signed on: February 6, 1990

Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edward Marks on: May 7, 1990

Respondent, Merrill Lynch, Pierce, Fenner & Smith's Submission Agreement signed by J. David Montague on: May 4, 1990

Respondent Edward Marks' Submission Agreement signed on: May 15, 1990

HEARING INFORMATION

Hearing Date/Sessions: July 19, 1991 for two (2) sessions

Hearing Location: Minneapolis, Minnesota

CASE SUMMARY

Claimants Seymour and Sybil Robinson ("Robinsons") alleged that Respondent Edward Marks ("Marks"), while employed by or acting as an agent for

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), induced them into purchasing an investment in the Metropolitan Life State Street Government Income Fund by misrepresenting or omitting material facts of the investment risk. In addition, the Robinsons alleged that the investment was unsuitable because they were required to withdraw the funds from the Metropolitan Fund no later than a specified date in order to avoid tax liability. Pursuant to the allegations, the Robinsons asserted violations of Federal and State securities laws; respondeat superior; breach of fiduciary duty; common law fraud; and negligence.

Respondents Merrill Lynch and Marks denied the material allegations of the Statement of Claim, alleging that: 1) the losses incurred were a result of events over which Respondents had no control and risks which the Robinsons knew or should have known; 2) Respondents had a reasonable basis for the investment recommendation which was consistent with the customer's stated investment objectives; and 3) the risks and the nature of the investment were disclosed to the Robinsons prior to purchase in a fair and accurate manner.

RELIEF REQUESTED

Claimants Seymour and Sybil Robinson requested entry of an award against Respondents Merrill Lynch and Marks in the amount of \$35,661.55 plus interest from the date of loss, costs and reasonable attorneys' fees.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edward Marks requested that the Statement of Claim be dismissed and denied in its entirety and that costs of the proceeding be assessed against Claimants.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned 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 original(s) remain on file with the NASD;
2. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edward Marks are jointly and severally liable for and shall pay to Claimants Seymour and Sybil Robinson the sum of \$17,500.00;
3. Parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$120.00 and the hearing session deposit of \$280.00 previously deposited with the NASD by the Claimants Seymour and Sybil Robinson. Claimants Seymour and Sybil Robinson are liable for and shall pay to the NASD additional forum fees in the sum of \$60.00. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. are liable for and shall pay to the NASD forum fees in the sum of \$460.00.

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

BY THE ARBITRATION PANEL

DATED:

George A. Beck, Esq.
George A. Beck, Esq.
Chairperson
Public Arbitrator

August 26, 1991

George Fox
George Fox
Public Arbitrator

August 27, 1991

Daniel K. Peterson
Daniel K. Peterson
Industry Arbitrator

August 27, 1991

Date Served: August 30, 1991