

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Among

Bong Whan Choi

Claimant

vs.

AWARD

NASD #90-00745

Merrill Lynch Pierce Fenner & Smith, Inc. and  
Ben Blough

Respondents

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Heard before:

Donna L. Devlin  
Henry Ott-Hansen  
Benjamin B. Segel

Public Arbitrator  
Industry Arbitrator  
Public Arbitrator

CASE SUMMARY

Claimant, Bong Whan Choi ("Choi"), alleged Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Ben Blough ("Blough"), failed to follow the "know Your Client" rule when they placed her in a margin account. Claimant averred she never consented to the margin account nor was she aware of the nature and risks of that type of account. Claimant stated Blough assured her that her money was safe and her investment would continue to grow. Finally, Claimant alleged Respondents violated the fiduciary position of trust between themselves and Claimant for their own financial gain.

Respondent, MLPFS, denied each and every allegation set forth in the Statement of Claim. MLPFS maintained Claimant failed to state a claim against them for which relief can be granted. MLPFS stated Claimant's claims were barred by the doctrine of estoppel. MLPFS averred Claimant's claims were barred to the extent it is established she waived her right to sue for damages. MLPFS contended the actions of Choi were the sole and proximate cause of her loss and/or damages. Finally, MLPFS maintained Choi's claims were barred by the statute of limitations.

Respondent, Blough, did not submit a Statement of Answer.

### RELIEF REQUESTED

Claimant, Choi, requested actual damages in the amount of \$107,817.76.

Respondent, MLPFS, requested Claimant's Statement of Claim be dismissed, plus costs.

### AWARD

On March 7, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant, Bong Whan Choi, on February 15, 1990 and by the Respondent, Merrill Lynch Pierce Fenner & Smith, Inc., on April 26, 1990 and not by Respondent Ben Blough. The hearing was held in Cleveland, OH and consisted of 2 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 as follows:

1- Pursuant to the by-laws of the NASD, Inc. it was determined that Respondent, Ben Blough, was required to submit to this arbitration and, therefore, is bound by this panel's rulings and determinations;

2- The claim by the Claimant, Bong Whan Choi, hereby is dismissed in all respects;

3- The parties shall each bear their respective costs, including attorneys' fees;

4- Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750.00 filing fee previously deposited by the Claimant;

5- Forum fees are payable to the NASD, Inc. in accordance with Section 43 of the Code of Arbitration Procedure and are assessed as follows:

a- Against Claimant, Choi, the amount of \$500.00. Pursuant to Section 43 of the Code of Arbitration Procedure, as amended June 18, 1990, \$200.00 of Claimant's filing fee is non-refundable. Therefore, Claimant is due a refund of \$50.00.

b- Against Respondents, MLPFS and Blough, jointly and severally, in the amount of \$1,000.00.

ARBITRATOR SIGNATURES

\_\_\_\_\_/s/  
Donna L. Devlin

\_\_\_\_\_/s/  
Henry Ott-Hansen

\_\_\_\_\_/s/  
Benjamin B. Segel

April 12, 1991