

National Association of
Securities Dealers, Inc.
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NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Mary DeSimone)

Name of Respondent(s))

Merrill Lynch, Pierce Fenner & Smith Inc)
Duane H. Sakal)

Case No. 90-00789

Heard before the Arbitrator :

Harry Polansky

CASE SUMMARY

This claim was filed with the National Association of Securities, Inc. (NASD) on March 15, 1990. The hearing was conducted in Fort Lauderdale, Florida on November 15, 1990, with a total of one (1) session.

Claimant, Mary T. DeSimone, alleged that Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS") and Duane H. Sakal ("Sakal"), failed to follow instructions to roll over her IRA investment, resulting in a loss to her by the assessment of federal income tax on the monies.

Respondents, MLPFS and Sakal, denied all allegations of wrongdoing and liability and alleged that Claimant failed to advise them that she intended her deposit of cash and bond purchases to be deposited into an IRA account; had never mentioned the opening of an IRA account; and did not advise Respondents until approximately two (2) years later that she had wanted the IRA account, long after the 60 day period had run. Respondents asserted the affirmative defenses of acting in a commercially reasonable manner; estoppel; and, failure to mitigate damages.

RELIEF REQUESTED

Claimants requested damages in the amount of \$1,215.00. Respondents requested dismissal and costs.

AWARD

On November 15, 1990, the arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on January 15, 1990, and by Respondents, Sakal on April 6, 1990 and MLPFS on May 7, 1990. The arbitrator, 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. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
2. Pursuant to Section 43 of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of Twenty Five and 00/100 (\$25.00) Dollars (one (1) session x \$25.00) against the Claimant payable to the National Association of Securities Dealers, Inc. This assessment is in addition to the \$25.00 non-refundable filing fee previously deposited by the Claimant.

OTHER ISSUES

None.

ARBITRATOR CONCURRING


Harry Polansky

Dated this 15th day of November 1990.