

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between  
Mary Ellen Donahue

Case #90-00859

vs.

Merrill Lynch, Pierce, Fenner & Smith Inc.      AWARD

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CASE SUMMARY

Claimant alleged that respondents' agent in the course of selling life insurance induced her decedent husband to misstate medical information on his life insurance. Claimant alleges that the respondents wrongful and fraudulent acts resulted in the loss of the face amount of the policy on the death of her husband.

Respondent contends that the salesman had no indication that the claimant's husband had any medical conditions which he should have disclosed, as he appeared to be in good health. Further the respondent contends that the claimant is guilty of "unclean hands" by virtue of her obtaining the policy under false pretenses, i.e. she was present when her husband answered questions untruthfully.

RELIEF REQUESTED

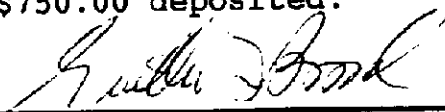
Claimant seeks \$179,518.00. Respondent seeks dismissal and costs.

AWARD

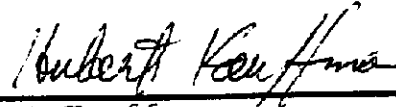
On October 23, 1991 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant on February 26, 1990 and by the Respondent on May 3, 1990. The hearing was held in Philadelphia and consisted of two hearing sessions. The arbitration 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. Claimant's awarded and Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. is liable and shall pay to Claimant \$864.00.

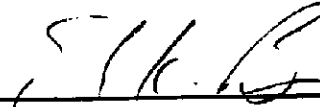
2. Respondent's motion to dismiss on collateral estoppel grounds based on prior statements and findings in District Court is denied
3. The parties shall each bear their respective costs, including attorneys' fees.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$750 filing fee previously deposited by the Claimant and assess an additional \$750 against Merrill Lynch Pierce Fenner & Smith Inc. for the two hearing sessions conducted in this matter. Respondent Merrill Lynch Pierce Fenner & Smith & Inc. is liable and shall reimburse Claimant the \$750.00 deposited.



Guillermo L. Bosch, Esq.



Hubert Kauffman



Ellen K. Burrows

Dated:

2/19/91