

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)/Counterrespondents

Steven J. & Brenda E. Horowitz

90-00891

Name of Respondent(s)/Counterclaimants

Merrill Lynch, Pierce Fenner & Smith Inc
Jerry D. Warren

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on March 26, 1990.

Claimants/Counterrespondents alleged that in connection with options transactions, Respondents/Counterclaimant violated section 12(s) of the Securities Exchange Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and constitutes common law fraud. Claimants/Counterrespondents further alleged that Respondents/Counterclaimants knowingly and willfully omitted to state material facts to Claimants/Counterrespondents, acted carelessly and in an unreasonable manner by recommending an unsuitable investment strategy, that Respondents/Counterclaimants violated the Rules of Fair Practice of the National Association of Securities Dealers, Inc. and that Respondents/Counterclaimant breached various fiduciary duties which they owed Claimants/Counterrespondents.

Respondents/Counterclaimants alleged that Respondent/Counterclaimant did not violate any federal or state securities laws or commit common law fraud, that Respondents/Counterclaimants did not violate any Rules of Fair Practice promulgated by the National Association of Securities Dealers, Inc., and that Respondents/Counterclaimants fulfilled all duties owed to Claimants/Counterrespondents. Respondents/Counterclaimants asserted seven affirmative defenses. Respondents/Counterclaimants asserted a Counterclaim based on the debit balance owed in Claimants'/Counterrespondents account as of November 1989, which Claimants/Counterrespondents allegedly contractually agreed to pay and refused, and Merrill Lynch was forced to absorb.

DAMAGES AND RELIEF REQUESTED

Claimants/Counterrespondents requested an award of:

1. General damages in the amount of \$159,366.16;
2. Interest thereon at the statutory rate of 10% per annum from and after August 11, 1989 to the date of the award;
3. For costs of the arbitration; and
4. for such other and further relief as may be deemed just and proper.

Respondents/Counterclaimants requested that Claimants' / Counterrespondents claim for damages and other relief be denied, that Respondents/Counterclaimants be awarded \$2,392.41 with accrued interest on their counterclaim, and that they be awarded costs and fees to be determined by the panel.


DAMAGES AND RELIEF AWARDED

On January 8, 9, 25 and 31, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant/Counterrespondents on March 23, 1990, by Respondent/Counterclaimant Merrill Lynch, Pierce, Fenner and Smith on May 16, 1990, and by Respondent/Counterclaimant Jerry Warren on May 16, 1990.

The hearing was conducted in San Diego, California, and lasted eight 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. Each and every claim of Claimants/Counterrespondents is dismissed.
2. Each and every Counterclaim of Respondents/Counterclaimants is dismissed.
3. The parties shall each bear their respective costs including attorneys' fees.
4. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant/Counterrespondents [as an assessment of forum fees by the arbitrators]. In addition, Respondent/Counterclaimant Merrill, Lynch, Pierce, Fenner and Smith is also assessed fees of \$5,250.00 representing forum fees, to be paid directly to the National Association of Securities Dealers, Inc.

Arbitrators Concurring


William R. Newsome

Gennaro A. Santangelo

Linda Lee Weber

Date of Decision: 6 Feb 1991