

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Lewis E. Henderson

90-00945

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith, Inc.

CASE SUMMARY

In a Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about March 30, 1990, Claimant Lewis Henderson ("Henderson") alleged that Respondent Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") liquidated a position in his portfolio in order to satisfy a margin call rather than sell the position which was responsible for the margin call.

In a Statement of Answer filed with the NASD on or about May 30, 1990, Merrill Lynch denied the allegations of wrongdoing and alleged that it was within its contractual rights to liquidate Henderson's stock in order to satisfy margin calls.

RELIEF REQUESTED

Henderson requested compensatory damages of \$1,035.00 and exemplary damages of \$50,000.00.

Merrill Lynch requested dismissal of the Claim in its entirety and assessment of costs to Henderson.

OTHER ISSUES

At the hearing, both parties voluntarily waived their right to have 3 arbitrators resolve the dispute in accordance with section 19 of the NASD Code of Arbitration Procedure. Also at the hearing, Henderson orally requested that the undersigned arbitrator make a compensatory award of \$3,971.88 which request was considered by the arbitrator.

PROCEDURAL MATTERS

On Friday, April 12, 1991 in New Orleans, Louisiana, a hearing lasting a total of 2 sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on March 28, 1990 by Claimant Lewis Henderson and on May 30, 1990 by Christopher D. Carvoti on behalf of Respondent Merrill Lynch Pierce Fenner &

Smith, Inc.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

AWARD

The undersigned arbitrator, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. The claim asserted against Merrill Lynch by Henderson shall be and is hereby denied and dismissed in its entirety;
2. The parties shall each bear their respective costs, expenses, and attorney's fees incurred in this matter; and
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant Henderson. Merrill Lynch is assessed additional forum fees of \$650.00. Merrill Lynch shall also directly reimburse Henderson for the \$500.00 hearing session deposit.

Dated:

April 18, 1991

Daniel E. Bivins III

Daniel E. Bivins, III
Presiding Arbitrator