

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Clifford & Joyce Goodletson

90-00948

Name of Respondent(s)

Merrill Lynch, Pierce Fenner & Smith Inc
Scott Arnott

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about April 2, 1990, Claimants Clifford and Joyce Goodletson ("Claimants") alleged that they were induced to transfer their account from the brokerage firm they were doing business with to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") through the misrepresentations of Respondent Scott Arnott ("Arnott"). Claimants alleged that Arnott represented that the investment advice given by Arnott would be a matter of discussion among and evaluation by management and brokers employed by Merrill Lynch; that the investment decisions made by Arnott would be supervised and periodically reviewed and that the fact that Arnott was an inexperienced broker was not of great consequence because of the supervision Merrill Lynch exercised over its accounts. Claimants also alleged that Arnott, after the transfer, did not explain the consequences of margin accounts or the possibility of losses from trading on margin.

In their joint statement of answer filed with the NASD on or about May 31, 1990, Merrill Lynch and Arnott denied each and every allegation of wrongful, improper or actionable conduct. Merrill Lynch and Arnott alleged that the losses suffered by Claimants resulted from their insistence on utilizing margin, the stock market crash of October, 1987 and their insistence on taking greater risks than they now claim they wanted. Merrill Lynch and Arnott alleged that each transaction was discussed in detail with Claimants prior to execution and that in many instances the purchases were unsolicited orders. Furthermore, Merrill Lynch and Arnott alleged that Claimants were experienced investors having maintained an account on margin at another broker-dealer and that they were made aware of the risks of their chosen strategies through conversations with Arnott, monthly statements and confirmations. Merrill Lynch and Arnott also asserted the affirmative defenses of ratification, estoppel and failure to mitigate damages.

RELIEF REQUESTED

Claimants requested damages of \$66,000, return of interest on their investment, attorney's fees and any other relief to which they were entitled.

Merrill Lynch and Arnott requested dismissal of the claims as alleged in their entirety and an assessment of the costs of the proceeding to Claimants.

AWARD

On Monday, April 8, 1991 in New Orleans, Louisiana during a hearing lasting two (2) sessions, the undersigned arbitrator(s) heard the controversy between the parties as set forth in submissions to arbitration signed on March 28, 1990 by Claimants Joyce M. and Clifford J. Goodletson, on May 30, 1990 by J. David Montague on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith and on April 8, 1991 by Respondent Scott Arnott.

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

The arbitration panel, 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. Claimant's claim asserted against Merrill Lynch and Arnott 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 Claimants. Merrill Lynch is assessed additional forum fees in the amount of \$500.00 which sum is payable to the NASD. Claimants are assessed additional forum fees of \$150.00.

Panel Members Concurring

Dated: April 8, 1991

John F. Galvin
Presiding Chair

Dated: April 8, 1991

David S. Foster

Dated: April 8, 1991

Robert R. Wolf
Industry Arbitrator

Date Served: April 11, 1991