

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Eleanor DeNunno

90-01139

Name of Respondent(s)

Merrill Lynch, Pierce Fenner & Smith Inc  
Mitchell J. Siverston  
Michelle Siverston

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CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on April 20, 1990, as amended on May 7, 1990, Claimant Eleanor D. DeNunno alleged that Respondent Mitchell Siverston, while acting as an agent or employee of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., engaged in the following activities:

1. Placed Claimant in securities (mutual funds and an annuity) which were unsuitable in light of Claimant's investment objectives of preservation of principal and liquidity;
2. Recommended the sale of certain common stocks Claimant brought to Merrill Lynch in order to induce the purchase of the mutual funds that were not designed to meet her investment objectives;
3. Misrepresented the status and value of the common stocks in order to induce the sale and purchase of new products;
4. Failed to explain or misrepresented the tax ramifications of certain investments and transactions, resulting in the payment of large capital gains taxes; and,
5. Misrepresented and/or omitted certain facts regarding the mutual fund and annuity purchases in order to induce the Claimant to purchase same.

In a Statement of Answer filed with the NASD on June 22, 1990, Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Mitchell Siverston denied each and every allegation of wrongdoing set forth in the Statement of Claim, stating affirmatively that:

1. Claimant was fully informed of all factors regarding the investments and recommendations made and made all her own investment decisions;
2. All recommendations to the Claimant were suitable based upon her stated objectives; and,
3. All risks, objectives, workings and sale changes for the funds were fully explained to Claimant.

#### RELIEF REQUESTED

Claimant Eleanor DeNunno requested entry of an award against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Mitchell Sivertson in an amount in excess of \$150,000.00, treble damages pursuant to the Arizona RICO act, unspecified punitive damages, attorneys' fees, costs, and pre- and post-judgment interest as provided by law.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Mitchell Sivertson requested that the arbitrators dismiss the claim in full and assess costs against Claimant.

#### OTHER ISSUES

Respondent Michelle Sivertson did not file a properly executed submission to arbitration and is not a member or associated person required to submit to arbitration pursuant to the Code of Arbitration Procedure. The panel determined that Michelle Sivertson was not subject to the jurisdiction of the panel.

#### PROCEDURAL MATTERS

On February 27, 1991 and March 21, 1991 in Phoenix, Arizona during a hearing lasting a total of four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 6, 1990 by Claimant Eleanor D. Nunno, on June 22, 1990 by Dennis M. Pape on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., and on July 23, 1990 by Respondent Mitchell J. Sivertson.

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(s) remain on file with the NASD.

#### AWARD

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. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Mitchell Sivertson are jointly and severally liable for and shall pay to Claimant Eleanor D. DeNunno the sum of \$35,900.52 plus interest at the rate of 10% per annum from January 17, 1990 until the award is paid in full. This award arises from the negligence claim only as there is no finding of fraud;

2. Parties shall each bear their own costs, including attorneys' fees, except for those specifically enumerated herein; and

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees the \$250.00 filing fee and the \$750.00 hearing session deposit previously deposited with the NASD by Claimant Eleanor D. DeNunno. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. are liable for and shall pay additional forum fees in amount of \$3,250.00.

By the Panel

Dated: March 21, 1991

Robert Williams, Jr.  
Presiding Chair

Dated: March 21, 1991

Patricia A. Covella

Dated: March 21, 1991

Donald J. Morton  
Industry Arbitrator

Date Served: April 19, 1991