

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant
Susanne Sherry

90-01214

Name of Respondent
Merrill Lynch Pierce Fenner & Smith, Inc.

Heard before the members of the Arbitration Panel:

| Name | Public/Industry |
|-------------------------|-----------------|
| Constantine N. Katsoris | Public |
| Barbara J. Glenns | Industry |
| Jerome Goodgal | Public |

REPRESENTATION

Claimant, Susanne Sherry ("Sherry"), was represented by Alfred J. Parisi of Parisi, Surico & DeRose. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") was represented by Michael E. Olney of MLPFS.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on April 30, 1990. Claimant alleged she invested in Putnam ("Putnam") GNMA Plus Trust Fund and periodically received dividend payments. Claimant stated Respondent then sold shares of Putnam causing Claimant to suffer a loss and then purchased shares of Merrill Lynch New York Muni Bond Fund ("MLNYX") for Claimant. Claimant averred there was a lessening in Yield between the Putnam Fund and Respondent's Fund causing a loss of income to Claimant. Finally, Claimant asserted Respondent earned a sizeable commission fee in this transaction while Claimant suffered a loss.

In a Statement of Answer filed with the NASD on June 1, 1990, Respondent stated Claimant was referred to Kenneth Rider, a broker at Respondent's Melville, NY office, and at his suggestion opened a Cash Management Account. Respondent stated Rider and Claimant discussed her investment objectives at their first

meeting and she told him about her Putnam investment. MLPFS stated Claimant complained about the amount of taxes she had been paying on the income from that investment. Respondent stated Rider recommended the MLNYX, Series B which has no front-end load or commission, but a deferred, contingent sales load of 4% if sold in one year, 3% if sold within two years, declining to nothing after the first four years. MLPFS averred that Rider was confident Claimant would hold the fund for four years. MLPFS stated Rider advised Claimant to discuss his recommendations with her accountant and brother which Claimant advised him she had done and that both of these individuals had agreed with Rider's recommendations. Respondent stated Rider then spoke to both individuals about the investment himself. MLPFS stated Claimant gave Rider the order to sell Putnam and invest the proceeds in MLNYX. MLPFS stated that while the Statement of Claim correctly observed that MLNYX generated less income than Putnam, it omitted the fact that the yield of MLNYX was generally triple tax-free, while the income generated by the Putnam fund was taxable. Respondent denied Claimant's allegation regarding the commission fee and stated that Claimant will pay no commission if she holds the investment for four years.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$61,000.00.

Respondent requested that the Statement of Claim be denied in all respects, reasonable attorneys' fees, costs and expenses.

AWARD

On November 21, 1990, May 14 & 28, 1991, in New York, NY during a hearing lasting 5 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Susanne Sherry, on March 30, 1990 and signed by George A. Schieren on behalf of Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. on May 31, 1990.

After considering the pleadings, the testimony and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1- 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 original(s) remain on file with the NASD;
- 2- Respondent, MLPFS, hereby is liable and shall pay to the Claimant, Sherry the amount of \$8,000.00 plus interest at the rate of 9% from the date of this Award;
- 3- All other claims are dismissed;

4- The parties shall each bear their respective costs including attorneys' fees;

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure the National Association of Securities Dealers, Inc. shall retain the \$150.00 non-refundable filing fee previously deposited by the Claimant;

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1- Against Claimant in the amount of \$1,250.00, however, Claimant may use the \$350.00 hearing session deposit to partially offset the amount of forum fees assessed against her;

2- Against Respondent in the amount of \$1,250.00;

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators Signature

/s/
Constantine N. Katsoris

/s/
Barbara J. Glenns

/s/
Jerome Goodgal

Date of Decision June 28, 1991