

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Richard J. and Carolyn Ann Scioscia )

Name of Respondent(s) )

Merrill Lynch Pierce Fenner & Smith Inc )  
Henry Tritsch )

Case No. 90-01380

Heard before the members of the Arbitration Panel:

Robert Herschmann, Esq.  
Anthony S. Paetro, Esq.  
Harry Polansky

Public  
Industry  
Public

REPRESENTATION

Claimants, Richard and Carolyn Ann Scioscia ("the Scioscias"), were represented by Dyanne E. Feinberg, Esq. of Gilbride, Heller & Brown, P.A.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill") and Henry Tritsch ("Tritsch"), were represented by Dennis Pape, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on May 14 1990. Claimants alleged that Respondents were liable for: breach of contract; and, negligence. Claimants alleged that, while employed with Merrill, Mr. Scioscia entered into an agreement with Merrill whereby he would be permitted to trade up to the CBOE limit of 15,000 options contracts and, Merrill would not cutoff or interfere with his trading program, provided he did not incur substantial losses. Respondent, Tritsch, purposely or negligently delayed one trade; Merrill began interfering with Claimant's trading by imposing restrictions on his trading and forcing him to liquidate certain contracts and not allowing him to liquidate others.

Respondents filed a Statement of Answer with the NASD on June 22 1990. Respondents denied all allegations of wrongdoing and alleged that: Claimant, himself failed to properly enter the order; Merrill had no agreement not to interfere with Claimant's trading; Merrill did not force Claimant to

liquidate his positions, and, although Merrill did impose limits on the size of Claimant's positions, there were no other restrictions on Mr. Scioscia, and, in fact, said limits actually reduced Claimant's losses. Respondents alleged the affirmative defenses including that: by maintaining an account at another brokerage firm during the period in question Mr. Scioscia was in violation of NYSE Rule 407; and, failure to mitigate damages.

#### RELIEF REQUESTED

Claimants requested damages in the amount of \$930,000.00 plus \$20,000,000.00 in lost profit, plus interest and punitive damages.

Respondents requested dismissal of the claim plus costs.

#### AWARD

On April 11, 12; June 14, 17; September 12 and 16, 1991; in Fort Lauderdale, Florida, during hearings lasting 12 sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on May 3, 1990 and by Respondent, Tritsch on July 2, 1990 and signed on June 22, 1990 by Dennis Pape, Esq. on behalf of Respondent, Merrill.

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned 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 originals remain on file with the NASD.
2. Respondents, Merrill and Tritsch, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$7,500.00, plus interest in the amount of \$4,275.00 for a total due to the Claimants of \$11,775.00.
3. Claimants' request for lost profits and punitive damages are denied.
4. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$18,000.00 (12 sessions x \$1,500.00 per session). Respondents, Merrill and Tritsch, are hereby assessed \$18,000.00, jointly and severally, \$700.00 of which shall be paid directly to the Claimants and \$17,300.00 of which shall be paid to the National Association of Securities Dealers, Inc.

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

OTHER ISSUES

None.

Concurring Arbitrators' Signatures

/s/  
Robert Herschmann, Esq.

/s/  
Anthony S. Paetro, Esq.

/s/  
Harry Polansky

Date of Decision: October 30, 1991