

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

William A. and Elsie Sanchez

vs.

90-01825

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Merrill Lynch Futures, Inc.
Merrill Lynch Commodities, Inc.
Michael C. Royer

REPRESENTATION

For Claimants: James Paul Green, Esq.

For Respondents: James Braden, Esq.

CASE INFORMATION

Statement of Claim filed: June 28, 1990

Claimant's Submission Agreement signed on: June 25, 1990

Joint Statement of Answer filed by Respondents on: January 4, 1991

Respondents' Submission Agreements signed on:

Michael Royer: December 27, 1990

Merrill Lynch: January 4, 1991

Respondents Merrill Lynch Futures, Inc. and Merrill Lynch Commodities, Inc. did not file submission agreements or submit to the jurisdiction of the NASD as they are not members and the applicable agreements between claimants and them do not provide for NASD arbitration.

HEARING INFORMATION

Hearing Date/Sessions: July 24, 1991 (2 sessions)
July 25, 1991 (2 sessions)
March 5, 1992 (2 sessions)
March 6, 1992 (1 session)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimants alleged: negligence, fraudulent concealment, negligent misrepresentation, breach of implied covenant of good faith and fair dealing, intentional and negligent infliction of emotional distress and intentional and negligent interference with prospective economic advantage in the sale and purchase of "commodities and futures on the commodities exchange and other exchanges."

Respondents denied all allegations of wrongful, improper or actionable conduct and asserted a lack of jurisdiction, bar of the applicable statutes of limitations, ratification and failure to state a cause of action as the securities laws do not govern the trading of commodities.

RELIEF REQUESTED

Claimant requested:

1. Special damages according to proof;
2. General damages according to proof;
3. Punitive damages in the third, fourth, sixth and eight causes of action.
4. Costs;
5. Attorney's fees

OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

AWARD

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 panel has considered carefully the contentions of the parties relating to the several time limitations asserted by Respondents. The panel concludes that neither Claimants' claims nor this proceeding to adjudicate these claims is time-barred under any applicable statute or rule.
2. Claimants are awarded the sum of \$25,999.72, jointly and severally against Respondents. In the circumstances of this case, the panel declines to award interest on this sum.
3. The claim for punitive damages is dismissed.

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

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750 hearing session deposit previously deposited by the claimant. In addition, Respondents are jointly and severally also assessed fees of \$4,500, representing charges as follows:

a) For Forum Fees assessed against:

calculated as follows: seven hearing sessions times \$750/session minus \$750 already paid by Claimants.

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

OTHER ISSUES

The arbitrators denied respondents' challenge of jurisdiction and allowed claimants to file and memorandum in the issue of the respondents motion of a bar due to the statutes of limitations, which was subsequently denied, as described above in the Damages and Relief Awarded section.

The panel has disregarded all post-hearing submissions other than those provided for in its order as communicated in the memorandum of March 12, 1992 from the NASD to the parties.

ARBITRATION PANEL

Public/Industry

Public Arbitrator

Public Arbitrator

Industry Arbitrator

Signature

Francis O. Spalding
Francis O. Spalding

Date of Decision

May 10, 1992

Served May 14, 1992