

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Stanley W. & Rosalie K. Durham, Trustees

90-01917

Name of Respondent(s)

Merrill Lynch, Pierce Fenner & Smith Inc
Michael D. Nadler

REPRESENTATION

Claimant was represented by Jeff Dennis Ferentz, Esq

Respondents were represented by V. James Mann, Esq.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on July 5, 1990.

Claimants, Stanley W. Durham and Rosalie K. Durham (Durham) allege that Respondents Merrill Lynch Pierce, Fenner & Smith, Inc. and Michael D. Nadler breached their contract with the claimants by recommending and executing common stock transactions which were unsuitable for Claimants based upon their express objectives of maintaining conservative income-producing accounts.

Respondents Merrill Lynch Pierce, Fenner & Smith and Michael D. Nadler deny each and every allegation made in the claim.

RELIEF REQUESTED

Claimants seek to recover \$739,400.00 in compensatory damages, \$1,000,000.00 in punitive damages, interest, expert witness fees, attorneys' fees and costs.

Respondents seek dismissal of the claim in its entirety and costs.

AWARD

On July 23, 1991, in Los Angeles, California during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants, Stanley W and Rosalie K. Durham as Trustees of the Durham Family Trust on June 27, 1990 and signed by V. James Mann on behalf of Respondent, Merrill Lynch Pierce, Fenner and Smith Inc. on September 17, 1990 and by Respondent Michael D. Nadler on August 20, 1990.

After the claimants rested their case, the respondents made a motion to dismiss the claim. After hearing and considering oral arguments, the panel granted respondents' motion and ordered the claim dismissed in its entirety.

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

FORUM FEES

In accordance with Section 43c of the NASD Code of Arbitration Procedure, the NASD shall retain the \$1,250.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators.

Arbitrators

Public/Industry
Public Chairperson
Public
Industry

Concurring Arbitrators Signatures

Edward T. Swanson
Edward T. Swanson

Date of Decision: _____
Served 9/13/1991

Served 9/4/91