

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Byung K. Cho

90-02158

Name of Respondents

Merrill Lynch, Pierce Fenner & Smith Inc  
Robert L. Allen

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REPRESENTATION

For Claimant: Stephen J. Holden, Esq. of DePere, WI.

For Respondents: Michael E. Olney, Esq. of Merrill, Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: August 7, 1990.

Claimant's Submission Agreement signed on: July 11, 1990 by Byung Kon Cho.

Statement of Answer filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Robert L. Allen on February 4, 1991.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed on: February 1, 1991 by George A. Schieren. Respondent Robert L. Allen did not execute a submission to arbitration.

HEARING INFORMATION

Hearing Date/Sessions: October 11, 1991 during two sessions.

Hearing Location: Milwaukee, Wisconsin

CASE SUMMARY

Claimant, Byung Kon Cho ("Claimant") alleged that Respondent Robert Allen ("Allen") while a broker with Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., ("Merrill Lynch") induced Claimant to invest in common stocks on margin without determining that Claimant understood the risks of trading on margin. Claimant alleged that this was inappropriate given Claimant's

conservative investment objectives.

Respondents Merrill Lynch and Allen generally denied all of the allegations of unsuitable trading, wrongdoing or any other basis of liability set forth in the Statement of Claim. Merrill Lynch and Allen alleged that Claimant had four accounts with Merrill Lynch and that the trades in Greenwich Pharmaceuticals, Inc. were unsolicited. Merrill Lynch and Allen asserted various affirmative defenses including, but not limited to, estoppel, waive ratification, failure to mitigate damages and the claims were time barred by applicable statutes of limitation.

#### RELIEF REQUESTED

Claimant requested \$55,995.61 for margin losses, margin interest and commissions charged.

Respondents requested dismissal of the claim in its entirety and award of reasonable attorney's fees, costs and expenses incurred to defend the claim.

#### 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.

Even though Allen failed to file with the NASD a properly executed submission to arbitration, he is bound by the panel's decision on all matters submitted because he is obligated to submit to arbitration at the request of the customer pursuant to Section 12 of the NASD Code of Arbitration Procedure.

#### 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 claims asserted by Claimant against Merrill Lynch and Allen shall be and are hereby dismissed in their entirety; and,
2. Each of the parties is responsible to bear its own costs, expenses and attorneys' fees incurred in this matter.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The National Association of Securities Dealers, Inc. (NASD) shall retain the \$150.00 claim filing fee and the \$500.00 hearing deposit initially deposited with the NASD by the Claimant. Merrill Lynch is assessed and shall pay to the NASD additional Forum Fees in the amount of \$500.00.

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

Concurring Arbitrators' Signatures

Name

Herbert S. Bratt  
Herbert S. Bratt, Esq.  
Chairman, Public Arbitrator

11/23/91  
Dated

Harry G. Slater  
Harry G. Slater  
Public Arbitrator

                      
Dated

Jeffrey Frieberger  
Jeffrey Frieberger  
Industry Arbitrator

                      
Dated

Date served by the NASD:

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Date served by the NASD: \_\_\_\_\_

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Herbert S. Bratt, Esq.  
Chairman, Public Arbitrator

Dated

Harry G. Slater  
Public Arbitrator

Dated

~~Jeffrey Frieberger~~  
Industry Arbitrator

11-21-91  
Dated

Date served by the NASD: \_\_\_\_\_