

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Patricia S. and James M. Rives (deceased)

Claimants

Case #90-02676
AWARD

vs.

Merrill Lynch, Pierce, Fenner and Smith, Inc.
and Bruce W. Mercer

Respondents

CASE SUMMARY

Patricia S. and James M. Rives, in a claim filed with the National Association of Securities Dealers, Inc. on September 25, 1990, alleged that Respondents churned their account to generate commissions. Mrs. Rives states that broker, Bruce W. Mercer, while employed at Merrill Lynch, Pierce, Fenner and Smith, Inc. needlessly bought and sold issues in their account. Mrs. Patricia S. Rives brought the claim on behalf of herself and her deceased husband, James M. Rives.

Respondents, in a joint Statement of Answer, maintained that they acted in a commercially reasonable manner, consistent with their obligations and responsibilities toward Claimant. They state that all trades were made with the express authority, direction and permission of Claimant.

Claimant replies that her husband was not an investment hobbyist, that he placed his trust in his broker, that she is convinced that transactions were solicited of her husband by Merrill Lynch, that substantial commissions were charged when a Nuveen purchase was made and that Mr. Mercer did not advise her of his pending departure from Merrill Lynch.

Respondents reaffirm their Statement of Answer and assert that Claimant received confirmation notices for the entire period now in question but failed to file any complaints at the time said notices were received.

RELIEF REQUESTED

Claimant requests Eight Thousand Nine Hundred and Forty Nine Dollars and No Cents (\$8,949.00).

Respondents request denial of the claim in all respects and costs assessed against the Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Cynthia A. Vanwart, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 30, 1990 and by the Respondents on January 15, 1991 and February 8, 1991 respectively;

And, that the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. That the claim of Patricia S. and James M. Rives be, and hereby is, dismissed.
2. That Respondents' request for costs be, and hereby is dismissed.
3. The One Hundred Fifty Dollar and No Cents (\$150.00) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant is assessed jointly and severally against the Respondents, Merrill Lynch, Pierce, Fenner and Smith, Inc. and Bruce W. Mercer, and payable by said Respondents to Patricia S. Rives.

AFFIRMATION

I, CYNTHIA A. VANWART, ESQ., do by hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

Date: 25 April 1991