

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between ;

Erna R. Tallman ;

Claimant ;

vs. ;

Merrill Lynch, Pierce, Fenner & Smith, Inc. ;

Ray Morton ;

Respondents ;

CASE #90-02820
AWARD

CASE SUMMARY

Claimant Erna R. Tallman, pro se, in a claim filed with the National Association of Securities Dealers, Inc. on October 10, 1990, alleged that Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Ray Morton inappropriately reinvested her IRA and placed her in a high risk CIF High Yield Series 25 investment unsuitable for her despite her instructions not to do so. Claimant alleged that this action created losses in her account.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. represented by in-house counsel, Christopher D. Cavuoti, Esq., maintained that Merrill Lynch, Pierce, Fenner & Smith, Inc. was not involved in any of the actions which directly brought about Claimant's claim for damages and that the Claimant failed to mitigate any damages that she may have incurred. Respondent Ray Morton, pro se, maintained that he fully disclosed the facts of all possible investments presented to her, that she authorized the purchase of the 8 CIF High Yield Series 25, and that the Claimant could have sold the investment at anytime during 1989.

RELIEF REQUESTED

Claimant requested damages of Three Thousand One Hundred Fifty-Nine Dollars and Fifty-Two Cents (\$3,159.52) plus one year's interest.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. asserted a Motion to Dismiss the firm from the action alleging that Respondent Ray Morton was not employed by Merrill Lynch, Pierce, Fenner, & Smith, Inc. at the time the events complained of took place, asserted a cross-claim against Respondent Ray Morton for

indemnification and requested that the claims of the Claimant be dismissed.

Respondent Ray Morton requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, John Cockburn, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Erna R. Tallman on December 31, 1990 by the Respondent Merrill Lynch, Pierce, Fenner, & Smith, Inc. on July 15, 1991 and by Respondent Ray Morton on June 26, 1991.

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

1. Respondent Ray Morton is liable and shall pay to the Claimant Erna R. Tallman the sum of One Thousand One Hundred Thirty Dollars and No Cents (\$1,130.00)
2. The claims of the Claimant against Respondent Merrill Lynch, Pierce, Fenner, & Smith, Inc. be and hereby are dismissed, and the Motion to Dismiss of Merrill Lynch, Pierce, Fenner, & Smith, Inc. is granted.
3. The cross claim of Respondent Merrill Lynch, Pierce, Fenner, & Smith, Inc. against Respondent Ray Morton be and hereby is dismissed.
4. The parties shall bear their respective costs.
5. The One Hundred Fifty Dollars and No Cents (\$150.00) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. and Respondent Ray Morton shall pay One Hundred Fifty Dollars and No Cents (\$150.00) directly to the Claimant as reimbursement of the filing fee.

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AFFIRMATION

I, John F. Cockburn, do 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.

John F. Cockburn
John F. Cockburn

DATED:

Nov. 5, 1991

DATED BY THE NASD, INC.: November 13, 1991