

Jaw

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimants

Konstantinos Andreadis  
Eleftherios Andreadis

Modified Award  
90-02848

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.  
Clifford Burke

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REPRESENTATION

For Claimants: Thomas J. Fieger, Esq. of the law firm of Cherry  
Ferrara Mutzel Belefonte McFadden and Wesner.

For Respondents: Michael E. Olney, Esq.

CASE INFORMATION

Statement of Claim filed: October 12, 1990.

Claimants Submission Agreements signed on: August 9, 1991.

Respondent Merrill Lynch Pierce Fenner & Smith Inc.'s Submission Agreement  
signed on: May 8, 1991.

Joint Statement of Answer filed by Respondents Merrill Lynch Pierce Fenner &  
Smith Inc., and Clifford Burke on: May 9, 1991.

Respondent Clifford Burke's Submission Agreement signed on: April 17, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: December 3, 1991, 2 Sessions  
December 20, 1991, 2 Sessions

Hearing Location: NASD offices located in Philadelphia, PA

CASE SUMMARY

Claimants alleged that Respondents purchased stock without authorization and  
purchased stock on margin without their authorization. Claimants further  
alleged Respondents did not explain to Claimants their account was a "margin"

account or the risks inherent in a margin account. Claimants further alleged Respondents acted within their own personal financial interest to purchase stocks on margin and contrary to the interests of Claimants; therefore, Respondents committed a breach of contract, breach of fiduciary duties and misrepresentation upon Claimants. Claimants further alleged Respondents' actions caused a deficit in Claimants' account and Respondent Merrill Lynch Pierce Fenner & Smith, Inc. "called the margin account" and sold some stock and charged Claimants monthly interest rates which have accumulated to date.

Respondents maintained the Claimants advised Respondents that they intended to buy stock on margin and the Claimants were explained the mechanics of purchasing on margin. Respondents further maintained Claimants ratified each and every position in their non-discretionary securities account and they did not breach any fiduciary or contractual duty as all transactions were conducted in accordance with all applicable laws, rules and regulations. Respondent further denied all allegations of unsuitable trading, unauthorized trading or misrepresentation.

RELIEF REQUESTED

Claimants alleged they were damaged as follows:

- a) A direct monetary investment loss in an amount in excess of \$10,000.00;
- b) Loss of shares of certain stock sold by Respondents without Claimants' approval when Claimants' margin was called by Respondents;
- c) Loss of ability to allow the shares of stock sold by Respondents when the margin was called to recover in value in due time after the market crash of October 1987;
- d) Loss of stock dividends on the shares of stock sold by Respondents when the margin was called;
- e) Continued monthly interest penalties imposed upon Claimants due to the "margin call" placing Claimants' account into a deficit;
- f) Attorney's fees;
- g) Interest income to Claimants on their monetary loss;
- h) Loss of flexibility to invest, alter or change Claimants' portfolio in different shares of stock since Claimants' account was placed into a deficit, i.e., severely restricting Claimants' portfolio options in future stock investments;

- i) Costs of claim;
- j) Embarrassment, anguish and humiliation;
- k) Punitive damages; and
- l) Other compensatory damages.

Claimants also requested that they be placed in the status quo, i.e., as if Respondents originally invested the \$19,872.00 as instructed (not on margin), together with all lost dividends and interest payments and applicable damages claimed in Claimants' (b) to (k) in the preceding paragraph. Claimants alleged they had enough money in their account to accept 51% of the stock purchases of the aforesaid margin purchase.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

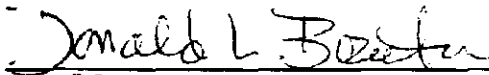
1. The Respondent Clifford Burke be and hereby is liable and shall pay to the Claimants the sum of \$1,500.00, inclusive of interest.
2. All claims against Respondent Merrill Lynch Pierce Fenner & Smith, Inc. be and hereby are dismissed in all respects.
3. Each party shall bear its own costs, including attorneys' fees.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions X \$300.00 = \$1,200.00 minus hearing session  
deposit of \$300.00 = net \$900.00 due.

The Respondent Merrill Lynch Pierce Fenner & Smith, Inc. be and hereby is liable and shall pay to the NASD the sum of \$900.00 to represent forum fees and the Respondent Merrill Lynch Pierce Fenner & Smith, Inc. be and hereby is liable and shall pay to the Claimants the sum of \$400.00 to reimburse them for the filing fee paid. The NASD shall retain the \$100.00 claim filing fee previously deposited by the Claimants.

  
Donald L. Bruton, Esq.

Public Arbitrator

Executed on: FEB. 10, 1992  
~~Date of Decision:~~  
Date of Decision: February 20, 1992