

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Mary E. Yandell

Claimant: #90-02890

and

Merrill Lynch, Pierce, Fenner & Smith, Inc.-Respondent

and

Stephen L. Yandell Third-Party

Respondents

REPRESENTATION OF PARTIES

Claimant Mary E. Yandell appeared and was represented by Michael Hamby, Esq.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. appeared through its corporate representative Mark Dutton, and was represented by Todd A. Zuckerbred, Esq.

Third Party Respondent Stephen L. Yandell appeared, and was represented by Jess Askew, Esq.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about October 15, 1990, Claimant Mary E. Yandell ("Claimant") alleged negligence on the part of Respondent Merrill Lynch, Pierce, Fenner & Smith ("Respondent") by issuing a check and disbursing IRA funds to Third Party Respondent Stephen L. Yandell ("Mr. Yandell") without Claimant's consent, that Respondent was not diligent in reporting the disbursement to Claimant, and that Respondent breached an agreement with Claimant.

In a Statement of Answer filed with the NASD on or about February 22, 1991, Respondent denied every allegation contained in the Statement of Claim. In addition, Respondent asserted the following affirmative defenses:

1. The Claimant failed to state a claim for which relief may be granted;
2. Claimant is estopped from asserting her claims due to her own acts and conduct;
3. Claimant ratified all acts complained of in the Statement of Claim;
4. Claimant failed to mitigate her damages; and
5. Claimant was negligent in the supervision of her financial affairs.

In Respondent's Third Party Claim, filed with the NASD on or about February 22, 1991, Respondent alleged that the cause of Claimants loss was solely due to the personal acts and wrongdoing of Mr. Yandell.

In a Statement of Answer filed with the NASD on or about June 3, 1991, Mr. Yandell denied each and every allegation contained in the Statement of Claim.

#### RELIEF REQUESTED

Claimant requested that a judgement be entered against the Respondent in the sum of \$12,649.34 plus interest and attorney's fees.

Respondent requested that the panel deny the claim in its entirety and assess the costs of these proceedings against her. Further, if Respondent is held liable for any amount in the Statement of Claim, Respondent requested that Mr. Yandell be liable to Respondent in that amount.

Mr. Yandell requested that the Panel deny the Claimant's Statement of Claim in its entirety.

#### PROCEDURAL MATTERS

On October 5, 1991 in Little Rock, Arkansas during a hearing lasting a total of one session, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on October 8, 1990 by Claimant Mary E. Yandell on February 20, 1991 by Todd A. Zuckerbrod on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Respondent Stephen L. Yandell did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD.

#### AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., and Stephen L. Yandell are hereby denied and dismissed;
2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Third Party claim against Stephen L. Yandell is hereby denied and dismissed;
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$100.00 filing fee and the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant Mary E. Yandell;

4. Pursuant to Section 43 (c) of the Code of Arbitration Procedure, the NASD shall retain the \$500.00 filing fee and the hearing session deposit in the amount of \$600.00 previously deposited with the NASD by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. for their Third Party claim in this matter; and
5. Claimant Mary E. Vandell is liable to, and shall pay to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$1,100 as reimbursement for their costs in defending this action.

Dated:

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s/s Patrick E. Hollingsworth, Esq.  
Presiding Chair  
Public Arbitrator