

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration BetweenName of Claimants:

Mary Ellen Burke and Paul V. Burke, Individually and as
Executor of the Estates of Eleanor M. & Edward P. Burke

90-03021

Name of Respondents:

Merrill Lynch Pierce Fenner & Smith Inc
Robert W. Smith

REPRESENTATION

For Claimants: Robert Lane, Esq. of Hodgson, Russ, Andrews, Woods &
Goodyear.

For Respondents: Martin Cohen, Esq., in house counsel at Merrill Lynch
Pierce Fenner & Smith ("Merrill Lynch").

CASE INFORMATION

Claimants filed a Statement of Claim on October 19, 1990. Claimants also
filed a letter dated October 30, 1990 listing case references supporting
their punitive damage request.

Claimant Mary Ellen Burke executed a Submission Agreement on August 6, 1990.
Claimant Paul Burke executed a Submission Agreement on August 6, 1990.
Claimant Paul Burke, as Executor of the Estate of Eleanor M. Burke,
executed a Submission Agreement on August 6, 1990. Claimant Paul Burke, as
Executor of the Estate of Edward P. Burke executed a Submission Agreement on
August 6, 1990.

Respondents Merrill Lynch and Robert W. Smith ("Smith") filed a joint
Statement of Answer on January 18, 1991. Respondent Merrill Lynch executed
a Submission Agreement on January 16, 1991. Respondent Smith executed a
Submission Agreement on January 2, 1991.

HEARING INFORMATION

Pre-Hearing Conference: June 10, 1991 - one session

Hearing Dates/Sessions: October 15, 1991 - two sessions
October 16, 1991 - two sessions
October 17, 1991 - two sessions

TOTAL - seven sessions

Hearing Location: Buffalo, New York.

CASE SUMMARY

Claimants alleged that contrary to their instructions, Respondents Merrill Lynch and Smith sold 2,112 shares of Walt Disney stock on July 20, 1988 and used the proceeds to purchase a Monarch life insurance policy. They further alleged that in view of the Claimants' investment objectives and financial situation and in view of the fact that at that time, Claimant Eleanor Burke was diagnosed as being terminally ill with cancer, Respondent Smith's recommendation to sell the stock was not a suitable one. They also alleged misrepresentation in connection with the sale of stock.

Respondents maintained that Claimants had discussed with Respondent Smith the purchase of an insurance policy issued by Monarch Life Insurance Company and had agreed that if their insurance application was approved, the Walt Disney stock would be sold in order to fund the insurance policy purchase. Respondents further maintained that the application was approved and that the stock was sold pursuant to Claimants' instructions. They further alleged that at no time were they told of Claimant Eleanor Smith's terminal condition and they denied that any misrepresentations were made in connection with the stock sale.

RELIEF REQUESTED

Claimants requested \$175,000 in compensatory damages or alternatively, rescission of the sale of the Walt Disney stock, together with punitive damages, interest, and costs.

Respondents requested dismissal of the claim and that costs be assessed against the Claimants.

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.

AWARD

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

1. That Respondents are jointly and severally liable and shall pay to the Claimants the sum of \$49,250.00 plus simple interest at the rate of 9% from October 19, 1990 to the date of payment of the award.
2. That the Claimants' claim for punitive damages is denied; and
3. Each side is to bear its own costs, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, forum fees of \$4500.00 are assessed. This amount was computed as follows:

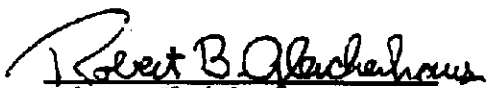
7 sessions x \$750.00/session - \$750.00 hearing session
deposit previously paid by Claimant = \$4500.00

Respondents Merrill Lynch and Smith are liable jointly and severally and shall pay the sum of \$4500.00 as forum fees.

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

The NASD will retain Claimants' \$200.00 nonrefundable claim filing fee.

Concurring Arbitrator's Signature:


Robert Gleichert, Esq.
Chairperson/Public Arbitrator

Date of Decision: January 22, 1992

AWARD

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

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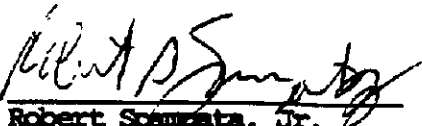
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Concurring Arbitrator's Signature:


Robert Spampata, Jr.
Industry Arbitrator

Date of Decision: January 22, 1992

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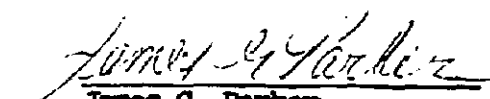
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Concurring Arbitrator's Signature:


James G. Parker
Public Arbitrator

Date of Decision: January 22, 1992