

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration between

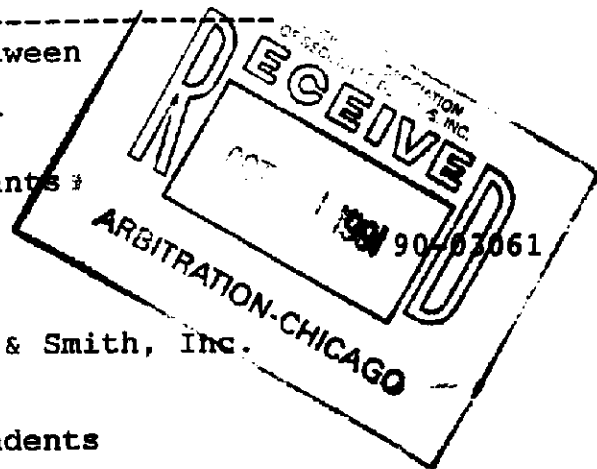
Kenneth A. and Mary H. Strasser

Claimants

and

Merrill Lynch, Pierce, Fenner & Smith, Inc.
C.T. Herman and Blair Naylor

Respondents



REPRESENTATION OF PARTIES

Claimants were represented by David F. Cunningham, Esq. of White, Koch, Kelly & McCarthy of Santa Fe, New Mexico. Respondents were represented by Joseph L. Hood, Jr., Esq. of Scott, Hulse, Marshall, Feuille, Finger & Thurmond, P.C. of El Paso, Texas.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about October 29, 1990, Claimants Kenneth and Mary Strasser ("Claimants") alleged that Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. Blair Naylor and C.T. Herman ("Respondents") wrongfully obtained money by material misrepresentation and omissions to explain material facts in connection with a short sale investment strategy and a related margin account. Claimants also asserted that Respondents put Claimants' funds into an inappropriate high risk investment when they knew or should have known that Claimants were novice investors with little capital and were looking for conservative investments. Claimants further alleged that Merrill Lynch failed to properly supervise Naylor and Herman. Claimants made these allegations in connection with the short sale of Amtech common stock in December of 1989. Claimants alleged that Respondents violated a fiduciary duty owed

to Claimants in failing to fully disclose facts about the short sale and related margin requirements and failing to make proper inquiry as to the ability of claimants to meet margin requirements. Claimants also alleged that Respondents failed to disclose that Regulation U prohibits a brokerage firm from investing funds that were the proceeds of bank loans.

In a Statement of Answer filed on or about December 18, 1990, Respondents alleged that Claimants were advised of the speculative nature of the transaction involving shorting stock. Respondents alleged that Claimants were provided a copy of a publication entitled "Strategies for aggressive Investors" which detailed the risks associated with speculative investments such as short sales. Respondents further alleged that Claimants were advised that they would have to cover additional margin calls that might be incurred if the price of Amtech stock increased following the initial public offering. Respondents alleged that claimants failed to take the advice to cover the position and cut their losses when the price of Amtech began rising. Respondents also alleged that they did not violate Regulation U because the loan was secured by real property and not the Amtech Stock.

RELIEF REQUESTED

Claimants requested compensatory damages of \$46,601.30 and punitive damages of \$150,000, costs and reasonable attorney's fees. Respondents requested that the claim be dismissed.

PROCEDURAL MATTERS

On July 25, 1991 in Albuquerque, New Mexico during a hearing lasting a total of three (3) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on October 15, 1990 by Claimants Kenneth and Mary Strasser, on April 8, 1991 by Michael J. Stewart on behalf of Respondent Merrill Lynch Pierce, Fenner & Smith, Inc., on April 5, 1991 by Respondent C.T. Herman and on November 19, 1991 by Respondent Blair Naylor.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive typed conformed copies of the award while the originals remain on file with the NASD.

AWARD

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

1. All claims asserted by Claimants against the Respondents shall be and are hereby denied and dismissed in their entirety;

2. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter; and

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants. Respondent Merrill Lynch is assessed additional forum fees of \$1500.00 which sum is payable to the NASD.

Dated:

Sept. 30, 1991

Clinton W. Marrs

Clinton W. Marrs, Esq.
Presiding Chair
Public Arbitrator

Peter J. Broullire, III
Public Arbitrator

Richard W. Arms, Jr.
Industry Arbitrator

Date Served by NASD:

10-15-91

AWARD

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

1. All claims asserted by Claimants against the Respondents shall be and are hereby denied and dismissed in their entirety;

2. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter; and

3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimants. Respondent Merrill Lynch is assessed additional forum fees of \$1500.00 which sum is payable to the NASD.


Dated:

9/26/91

Date Served by NASD:

10-15-91

Clinton W. Marrs, Esq.
Presiding Chair
Public Arbitrator



Peter J. Broullire, III
Public Arbitrator

Richard W. Arms, Jr.
Industry Arbitrator

AWARD

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Dated:

Clinton W. Marrs, Esq.
Presiding Chair
Public Arbitrator

Peter J. Broullire, III
Public Arbitrator


Richard W. Arms, Jr.
Industry Arbitrator

Date Served by NASD:

9/27/91
10/15/91