

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Patricia Lunn

No. 90-03463

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Philip Doster

REPRESENTATION OF PARTIES

For Claimant: Peter King, Esq. of Canel, Davis & King.

For Respondents: Peter Cantwell, Esq. of Cantwell and Cantwell.

CASE INFORMATION

Statement of Claim filed: on or about December 5, 1990.

Claimant's Submission Agreement signed on: December 3, 1990.

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Philip Doster: on or about March 8, 1991.

Respondent Philip Doster's Submission Agreement signed on: March 8, 1991.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed on: March 7, 1991.

HEARING INFORMATION

Hearing dates: December 19, 1991. 2 sessions.
December 20, 1991. 2 sessions.
January 13, 1992. 3 sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Patricia Lunn ("Claimant") alleged that at all relevant times Respondent Philip Doster ("Doster") acted as Claimant's broker for her accounts at Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("ML"). Claimant went on to allege a breach of fiduciary duty on the part of Doster and ML, unauthorized trading on the part of Doster, failure to supervise on the part of ML, fraud on the part of Doster, and violation of Rule 10b-5 by Doster and ML. The allegations arose out of certain investments, recommendations, and trades in Claimant's accounts involving real estate limited partnerships. Claimant stated that she was an unsophisticated investor, and therefore had to rely on the recommendations of Doster to make her investment decisions.

In their joint Statement of Answer, ML and Doster denied each and every allegation of actionable conduct. Respondents ML and Doster specifically denied that they engaged in breach of fiduciary duty, violations of Rule 10b-5 promulgated pursuant to Section 10b of the Securities Exchange Act of 1934, or common law fraud. In addition, Respondents ML and Doster asserted the following affirmative defenses:

1. Claimant failed to state a claim upon which relief may be granted.
2. Claimant has, by her conduct, waived any and all claims alleged in the Statement of Claim.
3. Claimant is estopped by her conduct from asserting any and all claims alleged in the Statement of Claim.
4. Claimant is barred from any recovery because she directed, authorized, consented to, acquiesced in, and/or ratified the transactions in question in her Cash Management account and retirement accounts.
5. Claimant is barred from any recovery because she failed to exercise that degree of diligence required in the handling of her Cash Management and retirement accounts.
6. Claimant controlled the trading that occurred in the Cash Management and retirement accounts, and not the Respondents.
7. All transactions upon which the Claimant based her allegations against Respondents ML and Doster were properly conducted in accordance with applicable rules and regulations.
8. Claimant's damages are solely the result of Claimant's conduct.
9. Claimant has failed to mitigate her damages.

RELIEF REQUESTED

For counts I and V of Claimant's Statement of Claim, Claimant requested the panel award damages in an amount, proven up at the hearing, in excess of \$100,000, plus punitive damages against Respondent Doster.

For Counts II and III, Claimant requested the panel award damages in an amount, proven up at the hearing, in excess of \$100,000 plus punitive damages against Respondent ML.

For count IV, Claimant requested the panel award damages in excess of \$100,000, plus punitive damages against Respondents ML and Doster.

Respondents ML and Doster requested that the arbitration panel deny the relief requested in the Statement of Claim in all respects.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing on January 13, 1992, Respondents ML and Doster made a motion to dismiss Claimants claims. After hearing argument, and deliberations, the panel ruled to dismiss Claimant's claim based on the failure to supervise by Respondent ML, and also ruled to proceed with Claimant's claims based on unauthorized trading and suitability.

The parties 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant Patricia Lunn's claims against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Philip Doster are hereby denied and dismissed; and

OTHER COSTS

2. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Philip Doster are hereby ordered to pay all hearing session fees associated with this arbitration as set forth more fully

below.

FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

7 hearing sessions X \$750.00 = \$5,250.00

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Respondents Merrill Lynch and Philip Doster are jointly and severally liable for, and shall pay to the Claimant Patricia Lunn her filing fee in the amount of \$200.00, and her hearing session deposit in the amount of \$750.00.

The remaining hearing session fees of \$4,500.00 are assessed jointly and severally against Respondents Merrill Lynch and Philip Doster.

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

Concurring Arbitrators:

Dated:

February 12, 1992

February 11, 1992

January 26, 1992