

N.A.S.D. AWARD .

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Michael M. Ochsenchlager

90-03626

Name of Respondents

Merrill Lynch, Pierce Fenner & Smith Inc.  
and Frank T. Santana

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REPRESENTATION OF PARTIES

Michael M. Ochsenchlager was represented by Joel H Greenburg, Esq., Chicago, IL.

Merrill Lynch, Pierce Fenner & Smith Inc. and Frank T. Santana were represented by Arthur H. Sobel, Esq. of Merrill Lynch, Pierce Fenner & Smith, Inc., New York, NY.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about December 19, 1990, Michael M. Ochsenchlager ("Claimant") alleged that Frank Santana ("Santana") failed to advise him of a reduction in the rating by Merrill Lynch, Pierce, Fenner & Smith, Inc. ("ML,P,F &S") of Bond Corporation Holdings. Claimant specifically alleged that Santana intentionally omitted with an intent to create a false impression with respect to the stock. Claimant alleged violations of Section 12 (2) of the Securities Act of 1933, Section 10 (b) of the Securities Exchange Act of 1934 and Rule 10(b)-5 promulgated thereunder, common law fraud and misrepresentation negligent misrepresentation, and breach of fiduciary duty.

In their Answer to the Statement of Claim filed with the NASD on or about March 28, 1991, Santana and ML,P,F & S (collectively as "Respondents") denied the allegations asserted in the Statement of Claim. Respondents specifically stated that Santana advised the claimant of the ratings of the Bond Corp. and sent the claimant written information regarding the company. Respondents also asserted the following affirmative defenses: waiver, estoppel and contributory fault.

RELIEF REQUESTED

Claimant requested an award in the amount of \$148,322.70, plus interest from the date of purchase to the present, attorneys fees and punitive damages in the amount of \$1,000,000.00.

Respondents requested that the Statement of Claim be dismissed in its entirety and an award of costs, expenses and attorney's fees.

#### PROCEDURAL MATTERS

On Thursday, September 12, 1991 in Chicago, Illinois during a hearing lasting a total of two (2) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on December 19, 1990 by Claimant Michael M. Ochsenchlager on March 22, 1991 by Arthur H. Sobel, Esq. on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and on March 18, 1991 by Respondent Frank T. Santana.

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 and the post-hearing submissions of the parties, has decided in full and final resolution of the issues submitted for determination as follows:

1. The statement of claim shall be and hereby is dismissed in its entirety;
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein; and
3. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain the hearing session deposit in the amount of \$1,000.00 previously deposited with the NASD by the Claimant and Claimant shall pay to the NASD the sum of \$1,000.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

9/19/91

William M. Getzoff  
William M. Getzoff, Esq.  
Presiding Chair  
Public Arbitrator

Susan Einspar-Wayne, Esq.  
Public Arbitrator

Kevin M. Kelly  
Industry Arbitrator

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Dated:

9/29/91  
9/23/91

William M. Getzoff, Esq.  
Presiding Chair  
Public Arbitrator

Susan Einspar-Wayne, Esq.  
Public Arbitrator

Kevin M. Kelly  
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9/23/91

William M. Getzoff, Esq.  
Presiding Chair  
Public Arbitrator

Susan Einspar-Wayne, Esq.  
Public Arbitrator

Kevin M. Kelly  
Industry Arbitrator