

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
James W. & June K. Churchman :
Claimant :
vs. : CASE #91-00173
Merrill Lynch, Pierce, Fenner & Smith, Inc.: AWARD
vs. :
Linda H. Francis :
Respondents :

CASE SUMMARY

James W. and June K. Churchman, in a claim filed with the National Association of Securities Dealers, Inc. on January 16, 1991, alleged that they were purposely misled by the information concerning Bond Corporation common stock provided by their financial consultant at Merrill Lynch, Pierce, Fenner & Smith, Inc., Linda H. Francis. They continue that Mrs. Francis recommended the stock as "blue chip" while it was really a "B" quality investment. A paragraph in support of Claimant's position was added to the claim by Linda H. Francis.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Karolyn Wolgast, by their attorney Arthur H. Sobel, Esq., maintain that Claimant's purchase of Bond Corporation Holdings, Ltd. was solicited by Linda H. Francis but deny that the Research Analyst in charge of Bond Corp. claimed it was rated a B stock and deny that Bond Corp. is bankrupt. Claimants, by a letter dated May 5, 1991, dismissed Karolyn Wolgast from any responsibility in their claim. Respondent states that Mrs. Francis had at least nine separate research analyses concerning the prospects of Bond Corp. Merrill Lynch asserts a Third Party Claim against Linda H. Francis and states that Karolyn Wolgast cautioned Francis to rely only on Merrill Lynch's rating for Bond Corp. and that if Francis did not share available information with the Claimants concerning their purchases, that she violated Merrill Lynch's policies and procedures and acted beyond the scope of her employment.

Third Party Respondent, Linda H. Francis, maintains that the stock in question was inappropriate for the Churchman's account

because it should have been rated a "D" long before their purchase and that the opinions told clients nothing to assist them in evaluating their risk in holding on for the possible large breakup value Merrill Lynch had touted for so long. She explained the information furnished by Greg Matthews of the Australian Research Department and states that the decision to assist her former clients in arbitration was based on her belief that Merrill Lynch perpetuated a fraud on their Bond Corp. clients. She provided comments on the suitability of Bond Corp. stock, the recommendations of the stock and a synopsis of the Compliance Department's approach concerning Bond Corp. stock.

RELIEF REQUESTED

Claimants request Five Thousand Four Hundred Dollars and No Cents (\$5,400.00) in damages plus interest, compensation for preparation of the claim totaling ten hours at Fifty Dollars (\$50) per hour and compensation for the fact that this matter has adversely affected Claimant's ability to invest in a prudent manner.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. request an award dismissing Claimant's claim in its entirety, or in the alternative, if Respondent is found liable, then Merrill Lynch seeks an award finding such liability to have been caused solely and exclusively by the wrongful conduct of Third Party Respondent, Linda H. Francis.

Respondent Merrill Lynch requests a hearing in this matter.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Verne C. Hampton, II, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on January 9, 1991 and by the Respondent on March 1, 1991 and by Third Party Respondent Linda H. Francis on May 20, 1991.

And, that the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s request for a hearing is denied.

2. The Third Party Claim of Merrill Lynch, Pierce, Fenner & Smith, Inc. against Linda H. Francis be, and hereby is, dismissed.
3. That Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to the Claimants James W. and June K. Churchman the sum of One Thousand Five Hundred Dollars and No Cents (\$1,500.00).
4. Claimant's requests for interest is denied.
5. The parties shall bear their respective costs including attorney's fees.
6. The One Hundred Fifty Dollars and No Cents (\$150.00) filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants and the Five Hundred Seventy-Five Dollars and No Cents (\$575.00) Third Party Claim fee previously deposited by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall both be retained by the NASD, Inc.

AFFIRMATION

I, VERNE C. HAMPTON, II, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

Verne C. Hampton II.
Signature of Arbitrator

DATED: 9/19/91