

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 Consolidated Arbitration BetweenName of Claimants

Carol Z. Hocker
Wendy Becker
Carolyn Z. Cumneen

Consolidated Cases
~~91-00460~~, 91-0472 and
91-00473

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Michael P. Rooney, Jr.

REPRESENTATION

For Claimants Carol Z. Hocker, Wendy Becker and Carolyn Z. Cumneen (collectively referred to as "Claimants"): Larry M. Keller, Esq. of the law firm of Sidkoff, Pincus & Green, P.C.

For Respondents Merrill Lynch, Pierce, Fenner & Smith and Michael P. Rooney, Jr. (collectively referred to as "Respondents"): John J. Murphy, Esq. of the law firm of Stradley, Ronon, Stevens & Young.

CASE INFORMATION

Carol Hocker's ("Hocker") Statement of Claim filed: February 11, 1991.

Wendy Becker's ("Becker") Statement of Claim filed: February 11, 1991.

Carolyn Cumneen ("Cumneen") Statement of Claim filed: February 11, 1991.

Hocker's Submission Agreement signed on: February 7, 1991.

Becker's Submission Agreement signed on: February 7, 1991.

Cumneen's Submission Agreement signed on: February 7, 1991.

Joint Statement of Answer to Case 91-00460 filed by Respondents on: May 14, 1991.

Respondent Merrill Lynch, Pierce Fenner & Smith, Inc.'s ("Merrill Lynch") Submission Agreement for Case 91-00460 signed on: May 9, 1991.

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Respondent Michael P. Rooney, Jr.'s ("Rooney") Submission Agreement for Case 91-00460 signed on: April 15, 1991.

Joint Statement of Answer to Case 91-00472 filed by Respondents on: May 10, 1991.

Merrill Lynch's Submission Agreement for Case 91-00472 signed on: May 9, 1991.

Rooney's Submission Agreement for Case 91-00472 signed on: April 15, 1991.

Joint Statement of Answer to Case 91-00460 filed by Respondents on: May 9, 1991.

Merrill Lynch's Submission Agreement for Case 91-00473 signed on: May 7, 1991.

Rooney's Submission Agreement for Case 91-00473 signed on: April 15, 1991.

Claimants Motion to Consolidate filed: February 13, 1991.

Respondents' Opposition to Claimants' Motion to Consolidate filed: May 14, 1991.

NASD's Notice of Consolidation mailed to the parties: July 16, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: October 23, 1991 - two sessions
October 24, 1991 - two sessions
November 7, 1991 - two sessions
April 21, 1992 - two sessions
April 22, 1992 - two sessions
April 23, 1992 - two sessions
Total Hearing Sessions = 12 sessions

Hearing Location: NASD Office, Philadelphia, PA

CASE SUMMARY

In Case 91-00460, Claimant Carol Z. Hocker alleged that Respondent Michael P. Rooney, Jr., who at all relevant times was an employee of

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Respondent Merrill Lynch, purchased unsuitable speculative high yield mutual funds for her various accounts including an account set up pursuant to the Uniform Gift to Minors Act and improperly placed one or more of her accounts on margin. Hocker further alleged that Merrill Lynch failed to properly supervise Rooney. As a result of Rooney's actions, Hocker alleged losses of at least \$159,742.69.

Respondents Merrill Lynch and Rooney denied all allegations of wrongful improper and actionable conduct. Respondents alleged that the investments recommended by Rooney met with Hocker's investment objectives. Furthermore, Respondents alleged that any losses sustained by Hocker were attributable to the \$299,000.00 in withdrawals made by Hocker from her account.

In Case 91-00472, Claimant Wendy Becker alleged that Respondent Rooney made unauthorized purchase of unsuitable speculative high yield mutual funds in her account and also improperly placed her account in margin. Becker further alleged that Respondent Merrill Lynch failed to properly supervise Rooney. As a result of these actions, Becker alleged losses of at least \$122,561.92.

Respondents Merrill Lynch and Rooney denied all allegations of wrongful, improper and actionable conduct. Respondents alleged that Becker was fully informed by Rooney of all actions taken in her account and that these actions were made with Becker's objectives of income and tax write offs in mind.

In Case 91-00473, Claimant Carolyn Z. Cunneen, alleged that Respondent Rooney made purchases of unsuitable speculative high yield mutual funds in her account and also improperly placed her account on margin. Cunneen further alleged that Merrill Lynch failed to properly supervise Rooney. As a result of these actions Cunneen alleged losses of approximately \$68,336.54.

Respondents Merrill Lynch and Rooney denied all allegations of wrongful, improper and actionable conduct. Furthermore, Respondents alleged that Cunneen was in control of her account and that each and every transaction in Cunneen's account was discussed with Respondent Rooney before being authorized by Cunneen.

RELIEF REQUESTED

In Case 91-00460, Hocker requested: a) damages for trading losses in the amount of at least \$130,000.00; b) margin interest paid by Hocker to Merrill Lynch in connection with said transactions in the amount of \$29,742.69; c) damages for lost profits on Hocker's accounts had the accounts been traded in accordance with Hocker's investment objectives; d) punitive damages; e) costs of this litigation; and f) prejudgment interest. Respondents requested that Hocker's claim be denied in its entirety and assess the costs of these

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proceedings against her.

In Case 91-00472, Becker requested: a) damages for trading losses in the amount of at least \$104,186.00; b) margin interest paid by Becker to Merrill Lynch in connection with said transactions in the amount of \$18,375.92; c) damages for lost profits on Becker's accounts had the accounts been traded in accordance with Becker's investment objectives; d) punitive damages; e) costs of this litigation; and f) prejudgment interest. Respondents requested that Becker's claim be denied in its entirety and assess the costs of these proceedings against her.

In Case 91-00473, Cumneen requested: a) damages for trading losses in the amount of at least \$64,771.89; b) margin interest paid by Cumneen to Merrill Lynch in connection with said transactions in the amount of \$3,564.65; c) punitive damages; d) costs of this litigation; and e) prejudgment interest. Respondents requested that Cumneen's claim be denied in its entirety and assess the costs of these proceedings against her.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents are jointly and severally liable to Carol Z. Hocker and shall pay to her the sum of **ONE HUNDRED TWO THOUSAND AND 00/100 DOLLARS** (\$102,000.00); no interest is awarded on this amount.
2. That Respondents are jointly and severally liable to Carol Z. Hocker as custodian for Lisa Zisac and shall pay to her the sum of **THREE THOUSAND EIGHTY-SEVEN AND 00/100 DOLLARS** (\$3,087.00); no interest is awarded on this amount.
3. That Respondents are jointly and severally liable to Wendy Becker and shall pay to Becker the sum of **ONE HUNDRED SIX THOUSAND SIX HUNDRED SIXTY-EIGHT AND 00/100 DOLLARS** (\$106,668.00); no interest is awarded on this amount.
4. Respondents are jointly and severally liable to Carolyn Cumneen and shall pay to Cumneen the sum of **SEVEN THOUSAND TWO HUNDRED SIXTY-FIVE AND 00/100 DOLLARS** (\$7,265.00); no interest is awarded on this amount.
5. All other claims are denied in their entirety.
6. All parties shall bears their costs, including attorneys' fees.

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Pursuant to Sections 30 and 43 of the Code of Arbitration Procedure, the panel has disposed of the fees as follows:

Any and all postponement fees paid by the parties are to be returned to the parties. Pursuant to the records of the NASD, a postponement fee was received by the Claimants on March 4, 1992 in the amount of \$750, this amount will be refunded to the Claimants. No postponement fees were paid by the Respondents.

Forum fees in this arbitration are 12 hearing session multiplied by the hearing session deposit of \$750 for a total of \$9,000.00. The panel has determined that forum fees shall be split between the Respondents so that Merrill Lynch shall pay forum fees in the amount of \$4500.00 and Rooney shall pay forum fees in the amount of \$4500.00.

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

Concurring Arbitrators' Signatures
Name

Public/Industry


John J. Jordan, Esq. -/Chairman

Public Arbitrator


Arnold Linsley

Public Arbitrator


Gordon E. Wright

Industry Arbitrator

DATE OF DECISION: JUNE 02, 1992