

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Margaret Gerovac, Personal Representative  
of the Estate of Sara Mae Young and as the  
Representative for George W. Young, Thomas  
F. Young, Jr. and Stephen L. Young

91-00695

Name of Respondents

Merrill Lynch, Pierce Fenner & Smith, Inc.  
and  
Alan P. Scherer

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REPRESENTATION

Claimant was represented by David C. Anson, Esq. of DeConcini, McDonald,  
Brammer, Yetwin & Lacy, Tucson, Arizona.

Respondents were represented by Dennis M. Pape, Esq. of Merrill Lynch,  
Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed with the NASD on March 4, 1991.

Claimant's Submission Agreement was signed on April 4, 1991 by Margaret  
Gerovac, Personal Representative of the Estate of Sara Mae Young and as the  
Representative for George W. Young, Thomas F. Young, Jr. and Stephen L.  
Young.

The Joint Statement of Answer was filed with the NASD by Respondents,  
Merrill Lynch, Pierce, Fenner & Smith, Inc. and Alan P. Scherer on July 26,  
1991.

Respondent, Merrill Lynch, Pierce, Fenner & Smith's Submission Agreement  
was signed on July 23, 1991 by Dennis M. Pape, Vice-President of the  
Corporate Counsel Group.

Respondent, Alan P. Scherer's Submission Agreement was signed on July  
30, 1991.

### HEARING INFORMATION

The hearing was held on March 26, 1992 for two sessions and March 27, 1992 for two sessions.

The hearing location was Scottsdale, Arizona.

### CASE SUMMARY

Claimant, Margaret Gerovac ("Gerovac"), alleged that Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Alan P. Scherer ("Scherer") solicited total trades (purchases and sales) in the accounts of Sara Mae Young of in excess of \$2,000,000 during calendar year 1987 and 1988. Gerovac alleged that as a result of this trading activity, the two accounts paid capital gains taxes of approximately \$80,000 and the value of the two accounts declined approximately \$326,000. In addition, Gerovac alleged that the heirs lost the tax benefit of acquiring a stepped-up basis in the securities sold. Gerovac alleged that this trading was not in the best interests of the accounts and that the trading activity was unsuitable for the accounts of Sara Mae Young. Gerovac alleged that Merrill Lynch and Scherer allegedly "churned" the accounts of Sara Mae Young by soliciting trades which were unnecessary and were done for benefit of Merrill Lynch and Scherer.

Merrill Lynch and Scherer denied the allegations of the claim. Merrill Lynch and Scherer denied that the accounts were churned and asserted that all transactions for her accounts were highly conservative and suitable for her based upon her stated objectives and needs. In addition, the value of the two accounts allegedly increased in value. Merrill Lynch and Scherer also asserted that the panel had no authority to award punitive damages and even if it did, they were not warranted by the facts in this case.

### RELIEF REQUESTED

Gerovac requested an award of damages in the amount of approximately \$360,000 in trading losses, approximately \$80,000.00 in taxes, loss of tax benefits not yet computed, return of all commissions earned via churning, attorney's fees, costs and punitive damages, if warranted.

Respondents Merrill Lynch and Scherer requested dismissal of the claim and assessment of costs against Gerovac.

#### OTHER ISSUES CONSIDERED & DECIDED

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 originals remain on file with the NASD.

Prior to the hearing, Claimant requested that an amendment to the pleadings be allowed to include all trading activity for calendar year 1986 too. The panel granted the Motion to Amend over objection by Merrill Lynch and Scherer pursuant to its authority set forth in Section 39(b) of the NASD Code of Arbitration Procedure.

#### AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing and post hearing submissions of the parties, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Merrill Lynch and Scherer are jointly and severally liable for and shall pay to Gerovac, the sum of Sixty one thousand dollars and no cents, (\$61,000.00);
2. Gerovac's petition for punitive damages is specifically denied; and,
3. The parties shall each bear their respective costs, expenses and attorney's fees incurred in this matter.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$200.00 non-refundable claim filing fee and the \$750.00 hearing session deposit made with the NASD by Gerovac. Merrill Lynch and Scherer are jointly and severally assessed and shall pay to the NASD additional Forum Fees in the amount of \$2250.00. Merrill Lynch and Scherer shall also be jointly and severally responsible to reimburse Gerovac in the amount of \$950.00 for the claim filing fee and hearing session deposit made with the NASD.

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

Concurring Arbitrators' Signatures

<u>Thomas F. Tobin, Esq.</u>	<u>04/24/92</u>
Presiding Chairman/Public Arbitrator	Dated

<u>John Hansen</u>	<u>04/27/92</u>
Panelist/Public Arbitrator	Dated

<u>Gary R. Marby</u>	<u>04/24/92</u>
Panelist/Industry Arbitrator	Dated

Date Award Served By the NASD: 05/06/92