

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 Arbitration Between

Name of Claimants

Martha Bowser and Traci Bowser

91-00790

Name of RespondentsMerrill Lynch Pierce Fenner & Smith Inc
Donald W. TordolinoREPRESENTATION

For Claimants Martha Bowser and Traci Bowser ("Claimants"): Michael Drain, a sole practitioner.

For Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Donald W. Tordolino ("Tordolino"): Charles L. Henderson, of MLPFS.

CASE INFORMATION

Statement of Claim filed: there was no date on this document; however, it was received by the NASD on March 12, 1991.

Claimant's Submission Agreement signed on: January 17, 1991.

Joint Statement of Answer filed by Respondents on: December 9, 1991.

Respondent MLPFS's Submission Agreement signed on: November 27, 1991.

Respondent Tordolino's Submission Agreement signed on: November 21, 1991.

HEARING INFORMATION

Hearing Date/Sessions: April 6, 1992/2 sessions.

Hearing Location: NASD, Cleveland, OH.

CASE SUMMARY

Claimants alleged Tordolino changed Claimants' account and purchased unsuitable stocks for Claimants. Claimants alleged this resulted in a loss of principal. Claimants further alleged that Martha Bowser was an unsophisticated investor who needed these funds "for her future".

Respondents alleged Martha Bowser was a sophisticated investor; agreed with Tordolino that they concentrate on short-term gains; that she had written checks totaling approximately one-third of the value of the account; and that after the 1987 crash Martha Bowser stated she did not wish to risk any more principal whereby she purchased a Certificate of Deposit and three utility

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stocks. Finally, Respondents maintained Claimants did not complain about the account until March 1990.

RELIEF REQUESTED

Claimants requested: actual damages in the amount of \$45,429.00, inclusive of commissions paid; margin interest paid; and recovery for the decline in the value of the investment.

Respondents requested: the Arbitration Panel dismiss Claimant's claims; attorneys' fees; costs and expenses.

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.

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- Respondents are liable, jointly and severally, and shall pay to Claimants the sum of \$11,700.00;
- 2- All other claims are denied;
- 3- Each party shall bear its own costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$120.00 non-refundable filing fee and the following Forum Fees are assessed.

2 sessions X \$400.00 = \$800.00 minus hearing session deposit of \$400.00 = net \$400.00 due.

Forum fees Assessed Against:

- 1- Respondents, jointly and severally, in the amount of \$400.00. Respondents, jointly and severally, shall also reimburse Claimants the sum of \$520.00, which represents the \$120.00 non-refundable filing fee and \$400.00 hearing session deposit.

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

Arbitrator Signature


Gary M. Bash
Gary M. Bash/Public Arbitrator

Date of Decision: April 24, 1992

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Arbitrator Signature

Malie J. Wilson
Malie J. Wilson/Industry Arbitrator

Date of Decision: April 24, 1992

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Arbitrator Signature


Carole C. Hayward/Public Arbitrator

Date of Decision: April 24, 1992

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