

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 :

Nemchand & Sheila Shah :

Claimant :

vs. :

Merrill Lynch, Pierce, Fenner & Smith, Inc. :

Respondent :

CASE #91-00904
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 21, 1991, Claimants Nemchand & Sheila Shah, who appeared Pro Se, alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. overcharged their account for service charges in connection to the purchase of 4 U.S. Treasury Bonds with various maturities. Claimants asserted that Respondent misrepresented facts in order to conceal the high mark-up of service charges. Claimants further alleged that Respondents failed to cancel the purchase of the 4 U.S. Treasury Bonds as they had instructed, both verbally and in writing.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. by and through its in-house counsel, Christopher D. Cavuoti, Esq., maintained that Claimants contacted them in order to purchase 4 U.S. Treasury Bonds at various maturities. Respondent further maintained that Claimants acknowledged, that they were aware there would be a charge for the bond purchases and that it was included in the price. Respondent argues that when a brokerage firm acts as a principal on a Treasury transaction, as in this situation, the mark-up is not required to be disclosed on the trade confirmation. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. further maintained that their mark-ups fall within the established regulatory guidelines. Respondent contended that Claimants deposited additional funds into their account to pay for their bond purchases and they were properly used for that purpose.

RELIEF REQUESTED

Claimants, Nemchand & Sheila Shah, requested \$2,200.00 in actual damages and \$6,600.00 in punitive damages.

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Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., requested the claim be denied and that costs be assessed against Claimants.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David H. Jarvis, 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 March 11, 1991 and not by the Respondent as required by Section 12 & 13 of the NASD Code of Arbitration Procedure.

And, 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. is liable and shall pay to the Claimants Nemchand and Sheila Shah, the sum of \$1,000.00 in damages.
2. The Claimants request for punitive damages is denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. The Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. shall pay \$150.00 to the Claimants as reimbursement.

NASD

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Arbitration

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AFFIRMATION

I, DAVID H. JARVIS, 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.


Signature of Arbitrator

DATE OF DECISION: January 23, 1992