

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

MARY LACKIE

Claimant

ARBITRATION-CHICAGO

and

91-01152

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.
AND BRUCE MERCER

Respondents

REPRESENTATION OF PARTIES

Claimant Mary Lackie was represented by Graham Clark, Esq. of Mahoney and Hagberg, Minneapolis, Minnesota.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. was represented by James Mann, Esq. of Merrill Lynch, Pierce Fenner & Smith, Inc., New York, New York.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about April 11, 1991, Claimant Mary Lackie ("Lackie") alleged that she is an unsophisticated and inexperienced investor who opened an account with Respondent Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch") with the intention of investing her money in safe, conservative investments, never invading the principal and living off the interest. Lackie alleged that Respondent Bruce Mercer ("Mercer") invested her money in Sunbelt Dominion and Development, Inc. ("Sunbelt") but never received a prospectus regarding the investment. Later, Lackie alleged she discovered the investment was risky, the certificates representing her ownership interest in Sunbelt were worthless, and that her principal had been invaded. Lackie alleged she demanded withdrawal of the Sunbelt investment and her money back, but she allegedly did not receive any money. Lackie alleged violation of 10(b)(5) on said investment, suitability, and misrepresentation. Lackie alleged that Mercer signed a promissory note to pay Lackie her money from the Sunbelt investment, promissory note which Lackie now seeks payment.

In a Statement of Answer filed with the NASD on or about June 7, 1991, Respondent Merrill Lynch denied the allegations set forth in the Statement of Claim. Specifically, Merrill Lynch denied having knowledge of Lackie's

investment of Sunbelt, denied that any such purchase was made through Merrill Lynch, and denied that Mercer was acting within the scope of either his actual or apparent authority.

Merrill Lynch made no response to the claim regarding Mercer's promissory note, alleging that said note seems to be a private matter between Mercer and Lackie. Merrill Lynch also filed a cross-claim against Mercer for indemnification in the event Merrill Lynch is found liable.

RELIEF REQUESTED

Claimant requested actual damages in the amount of in excess of Fifty Thousand Dollars (\$50,000), punitive damages, rescission of all trades in said account including return of all consideration paid for said securities, costs, expenses, and attorney's fees.

Respondent Merrill Lynch requested that the claim be dismissed and costs assessed against Claimant, or, judgment against Respondent Mercer for indemnification.

OTHER ISSUES

Respondent Bruce Mercer did not appear at the oral hearing, nor sign a submission agreement or answer the Statement of Claim; however, proper service of the claim was effected on Mercer.

PROCEDURAL MATTERS

On October 2, 1991 in Minneapolis, Minnesota during a hearing lasting a total of (2) two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on March 28, 1991 by Claimant Mary Lackie, and on May 16, 1991 by James Mann on behalf of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

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 original(s) remain on file with the NASD.

AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. and Bruce Mercer, jointly and severally, shall be and hereby are liable for and shall

pay to Claimant Mary Lackie actual damages in the amount of Fifty Nine Thousand Dollars and No Cents (\$59,000);

CROSS-CLAIM

2. Respondent Bruce Mercer shall be and hereby is liable for and shall indemnify Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. in the amount of Fifty Nine Thousand and No Cents (\$59,000);

PROMISSORY NOTE

3. Claimant Mary Lackie shall assign her promissory note from Respondent Bruce Mercer to Respondent Merrill Lynch, Pierce Fenner & Smith, Inc.;

4. Each party shall bear their own costs and expenses other than those specifically enumerated herein;

5. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the claim filing fee in the amount of \$120.00 and the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant. Respondents shall pay to the NASD additional forum fees in the amount of \$400.00. The NASD shall retain the claim filing fee in the amount of \$500.00 and the hearing session deposit in the amount of \$600.00 previously deposited with the NASD for the cross-claim by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Dated:

Lawrence R. Commers, Esq.
Presiding Chair
Public Arbitrator

Arthur H. Cobb
Public Arbitrator

10/15/79

Mica T. Duncan
Industry Arbitrator

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Dated:

Lawrence R. Commers, Esq.
Presiding Chair
Public Arbitrator

October 29, 1991

Arthur H. Cobb
Public Arbitrator

Mica T. Duncan
Industry Arbitrator

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