

Arbitration

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Lucille Thomas

91-01313

Name of Respondent(s)

Michael Novak

REPRESENTATION

For Claimant, Lucille Thomas ("Thomas"): Theodore F. Brill, Esq. of the Law Offices of Theodore F. Brill, Esq.

For Respondent, Michael Novak ("Novak"): Ronald Shindler, Esq. of Fowler, White, et al.

CASE INFORMATION

Statement of Claim filed: April 25, 1991. Claimant's Submission Agreement signed: April 16, 1991.

Respondent, Novak's, Statement of Answer filed: June 12, 1991. Respondent's Submission Agreement signed: June 11, 1991.

HEARING INFORMATION

On February 5, 1992, in Fort Lauderdale, Florida, a hearing lasting three (3) sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondent was liable for misrepresenting the nature and risks of certain mutual funds and that such investments were unsuitable for Claimant in light of her investment objectives and sophistication. Claimant alleged that Respondent was liable for violations of Federal and State Securities Laws; common law fraud; negligence and gross negligence; breach of fiduciary duty; and negligent supervision.

Respondent denied all allegations of wrongdoing and alleged that Claimant received prospectuses and was informed of the risks involved; Claimant was not a novice investor; Thomas' investment objectives were income and growth and Claimant failed to complain about the investments in a timely manner.

Respondent alleged the affirmative defenses of compliance with industry custom, practice and regulations; failure to state a claim; statute of limitations; failure to mitigate damages; failure to exercise due diligence; negligence on the part of Claimant; assumption of risk; lack of proximate cause; laches; ratification; waiver and estoppel; and Claimant is not entitled to recover either attorney's fees or punitive damages.

RELIEF REQUESTED

Claimant requested damages in the amount of \$42,476.88 plus a reasonable return based on what suitable investments should have yielded; punitive damages of \$22,500.00, attorney's fees and costs.

Respondent requested dismissal of the claim plus costs and expenses and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

1. Claimant's original claim named Merrill Lynch, Pierce, Fenner and Smith, Inc., Drexel Burnham Lambert, Inc. and Alan I. Schreiber as additional Respondents. Drexel Burnham Lambert, Inc. and Alan I. Schreiber filed for bankruptcy and, therefore, are dismissed from this case without prejudice pursuant to the automatic stay provisions of the Bankruptcy Code. Claimant dismissed Merrill Lynch Pierce Fenner and Smith, Inc. with prejudice pursuant to a settlement.

2. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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

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. Respondent, Novak, is found not liable and, therefore, all claims against him are hereby dismissed.

2. Claimant's request for attorney's fees, costs and punitive damages are denied.

3. Respondent's request for attorney's fee, costs and expenses are denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (3 sessions x \$500.00 per session). Claimant is hereby assessed \$1,500.00 for which the NASD shall retain the \$500.00 previously deposited in partial satisfaction thereof.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

15 /
Nancy J. Cliff, Esq.

Public

15 /
Linda M. Granata, Esq.

Industry

15 /
Ronald Thomas Spann, Esq.

Public

Date of Decision: March 9, 1992