

PUBLIC

**NASD**

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
FAX (212) 668-4339

In the Matter of the Arbitration Between

Name of Claimant

Lisa Bush

vs.

Case#

91-01671

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc  
Linus G. Cooke

REPRESENTATION

For Claimant, Lisa Bush ("Claimant"), Thomas J. Hanrahan, Esq. and Samuel Bush, Esq.

For Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Linus G. Cooke ("Respondents"), Edwin A. Ziph, Esq. of Bressler Amery & Ross.

CASE INFORMATION

Statement of Claim was filed on May 29, 1991.  
Claimant's Submission Agreement was signed on May 29, 1991.

Joint Statement of Answer was filed by Respondents on July 26, 1991.  
Merrill Lynch's Submission Agreement was signed on July 25, 1991  
Cooke's Submission Agreement was signed on August 29, 1991.

HEARING INFORMATION

Hearing Dates/Hearing Sessions:

June 9, 1992	-	Two Sessions
July 28, 1992	-	Two sessions.

Hearing Location: National Association of Securities Dealers, Inc.'s offices located at 33 Whitehall Street, New York, New York.

CASE SUMMARY

Claimant seeks to recover damages she sustained as a result of Respondents' alleged fraudulent and deceitful practices. Claimant alleges that Respondent

effected unsuitable trades in her accounts and misrepresented and/or failed to state and advise her about material facts. Claimant alleges that Respondents' acts constitute, among other things, breach of contract, breach of duty, violations of the rules and regulations of the National Association of Securities Dealers, Inc. ("NASD") and various exchanges. Claimant further alleges that Merrill Lynch failed to reasonably supervise or prevent the fraudulent and wrongful activities which occurred in her account.

Claimant states that she is a 58 year old divorcee and a real estate broker. Prior to opening her account at the Respondent firm, Claimant states that she had maintained accounts at Shearson Bros. and Drexel Burnham Lambert, Inc. At the recommendation of her co-worker, Harvey Luke, she transferred her account to Cooke who was employed with the Respondent firm. Claimant further states that she told Cooke that she did not want a stockbroker, but that she wanted to employ the knowledge and expertise of a financial planner in the conservative and safe investment of her portfolio and that Cooke represented himself as a financial consultant.

Claimant alleges that Cooke failed explain all the features of the OMA Agreement which she signed, especially the provision on the reserve side which authorized purchases and trade of securities on margin. Claimant contends that she did not understand nor contemplate margin transaction and that if the margin feature was explained to her, she would not have executed the agreement.

Claimant also alleges that Cooke traded AMR Delaware and Hilton on margin and that these trades were extremely speculative and unsuitable for her portfolio.

Respondents generally deny all the charges of wrongdoing and liability for all claims for damages alleged in the Statement of Claim. Respondents maintain that Claimant executed a OMA Agreement which contained clear language and that Claimant elected to have her account handled as a margin account. Respondents maintain that Cooke explained this feature to Claimant. Respondents argue that Claimant engaged in high risk, speculative investment with two prior brokerage firms.

Respondents assert eight affirmative defenses. Respondents deny that there were any unsuitable transaction in Claimant's account or that Claimant is entitled to punitive damages.

RELIEF REQUESTED

Claimant requests an award of \$150,000.00, punitive damages, interest, commissions, attorney's fees and costs.

Respondent requests that the claim be dismissed in its entirety, that cost of this proceeding be assessed against the Claimants, an award of attorney's fees and that the arbitration panel award Respondents such other and further

relief as is deemed just and proper.

OTHER ISSUES CONSIDERED AND 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.

After Claimant rested, Respondents moved to dismiss the claims on the ground that Claimant failed to make out a prima facie case. After hearing arguments on this motion, the panel denied the Motion.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against Respondents, Merrill Lynch and Cooke, are denied;
2. All claims for attorneys' fees are denied;
3. All claims for costs are denied.

FORUM FEES


Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1. Forum fees in the amount of \$3,000.00 for 4 hearing sessions at \$750.00 per session are assessed and shall be borne equally by the parties;
2. Therefore, Respondent Merrill Lynch is assessed \$1,500.00; and
3. Claimant is assessed \$1,500.00. Claimant is further assessed \$200.00 non-refundable filing fee. Claimant deposited \$950.00 with the NASD and therefore owes the NASD \$750.00.

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

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Concurring Arbitrator's Signature


  
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Thomas A. Turley

Date of Decision: September 1, 1992

STATE OF NEW YORK  
COUNTY OF *Westchester*

S.S.:

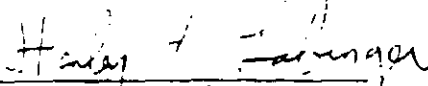
On this *31<sup>st</sup>* day of August 1992, before me personally appeared  
**THOMAS A. TURLEY** known and known to me to be the individual  
described in and who executed the foregoing instrument and he  
duly acknowledged to me that he executed the same.



**JONATHAN FREDE**  
Notary Public, State of New York  
No. 30-4742870  
Qualified in Nassau County  
Commission Expires May 31, 1993

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Concurring Arbitrator's Signature

  
Stanley H. Labinger

Date of Decision: September 1, 1992

STATE OF CONNECTICUT  
COUNTY OF Hartford

s.s.: W. Hartford

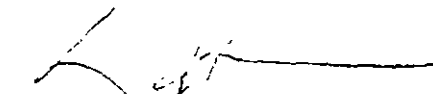
On this 28<sup>th</sup> day of August 1992, before me personally appeared **STANLEY H. LABINGER** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Kimberly M. Cassett

KIMBERLY M. CASSETT  
NOTARY PUBLIC  
COMMISSION EXPIRES MARCH 31, 1996

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Concurring Arbitrator's Signature

A handwritten signature in dark ink, appearing to read 'David Finnegan', written over a horizontal line.

David Finnegan, Esq.

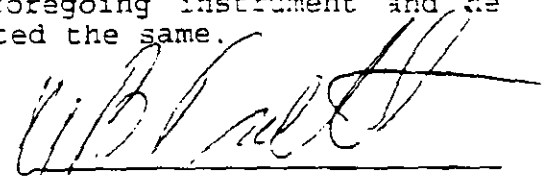
Date of Decision: September 1, 1992



STATE OF NEW YORK  
COUNTY OF NEW YORK

S.S.:

On this 28<sup>th</sup> day of August 1992, before me personally appeared **DAVID FINNEGAN, ESQ.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



HENRY B. TRATTNER  
NOTARY PUBLIC, State of New York  
No. TR-01-4689385  
Qualified in Nassau County  
Commission Expires October 31, 1993