



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) 858-4389

In the Matter of the Arbitration Between

Name of Claimants

Thelma & Earl Skelton and Mary Fried

91-01678

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc  
Barry Kornfeld  
John Rachlin  
Deborah Page

REPRESENTATION

For Claimants: Thelma F. Skelton represented the Claimants.

For Respondents: Elizabeth G. Armstrong, Esq. of Merrill Lynch, Pierce,  
Fenner & Smith, Inc.

CASE INFORMATION

Statement of Claim filed: May 30, 1991.

Claimants', Mary Fried and Thelma F. Skelton, Submission Agreement signed on:  
May 9, 1991.

Claimant Earl F. Skelton's Submission Agreement signed on: May 10, 1991.

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner  
& Smith., Deborah Page, Barry Kornfeld & John Rachlin ("Respondents") on:  
July 26, 1991.

Respondent Deborah Page's Submission Agreement signed on: July 24, 1991.

Respondent Barry M. Kornfeld's Submission Agreement signed on: July 23, 1991.

Respondent John Rachlin's Submission Agreement signed on: July 26, 1991.

HEARING INFORMATION

Hearing Date/Session: November 22, 1991 - one session

Hearing Location: NASD Office, Washington, D.C.

CASE SUMMARY

Claimants Earl F. and Thelma F. Skelton and Mary Fried ("Claimants") alleged that Respondent Barry Kornfeld ("Kornfeld") gave Claimants unsuitable investment advice, specifically Kornfeld told Claimant Thelma Skelton ("Mrs. Skelton") to invest Claimant Mary Fried's, Mrs. Skelton's mother, life savings into Templeton Global Fund ("Templeton"). Claimants alleged that this fund did not meet the investment needs of Mary Fried. Mrs. Skelton alleged that when she questioned Kornfeld regarding the Templeton investment, he made misleading and fraudulent statements. Claimants alleged that due to Mrs. Skelton's dissatisfaction with Kornfeld, she had the Claimants' accounts transferred to Respondent John Rachlin ("Rachlin"). Claimants' alleged that Mrs. Skelton placed an order with Rachlin to sell the Templeton investments in their accounts. Claimants alleged that Rachlin failed to execute the sell order in account number 84A-26795. Claimants alleged that when they placed an order to sell out their Consults account, Respondents failed to promptly execute that sell order. Claimants alleged that they lost money due to Respondents failure to promptly execute their order. Mrs. Skelton alleged that Respondent Deborah A. Page ("Page") made misleading statements in attempt to induce the Claimants to sign a release.

Respondents denied each and every allegation asserted by the Claimants and maintained that they properly handled the Claimants' accounts. Kornfeld maintained that he recommended the Templeton Fund to Claimants based on Mary Fried's need for current monthly income and growth over the long term. Respondents maintained that Templeton was suitable for Mary Fried and the Skeltons' accounts. Kornfeld maintained that he explained this investment to Mrs. Skelton and she approved this investment. Respondents maintained that Claimants received prospecti. Kornfeld maintained that he did not give Mrs. Skelton fraudulent or misleading information but that he had provided Mrs. Skelton with the historical information concerning the Templeton Fund. Rachlin maintained that he properly executed the sell orders placed by the Claimants for the Templeton Fund and maintained that Mrs. Skelton did not place an order to sell the Templeton in the account she held with her husband. Respondents maintained that with respect to Claimants' Consults account, that Rachlin instructed his sales assistant not to execute the order until he had a letter of authorization from the Claimants. Respondents maintained that the liquidation of the Consult account was liquidated in a commercially reasonable period of time. Respondents maintained that Page was not attempting to trick Claimant into signing a release.

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RELIEF REQUESTED

Claimants requested: compensatory damages in the amount of \$1935.44, plus punitive damages in the of \$60,000 plus costs of this arbitration.

Respondents requested: that Claimants claims be dismissed in their entirety and that all costs and fees be assessed against Claimants.

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. That Respondents are jointly and severally liable to the Claimants and shall pay to the Claimants compensatory damages in the amount of EIGHT HUNDRED THIRTY-FIVE AND 44/100 DOLLARS (\$835.44); interest is awarded on this amount at a rate of eight per cent simple interest per annum from July 17, 1990 until the date this award is paid.
2. Claimants' request for punitive damages is denied in its entirety.
3. Each party shall bear their own costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, Respondent Merrill Lynch is directed to reimburse to the Claimants \$500 for the hearing session deposit that Claimants previously deposited with the National Association of Securities Dealers, Inc.

**NASD**

Page 4  
Award 91-01678

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Concurring Arbitrator's Signature  
Name

  
Maurice R. Dunie

Public/Industry

Public Arbitrator

Executed on:

~~Date of Decision:~~

12/2/91

Date of Decision: December 18, 1991

Page 4  
Award 91-01678

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Concurring Arbitrator's Signature

Name

Theodore W. Urban  
Theodore W. Urban

Public/Industry

Industry Arbitrator

Executed on:

~~Date of Decision:~~

Nov. 22, 1991

signed - Dec. 9, 1991

Date of Decision: December 18, 1991

Page 4  
Award 91-01678

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Concurring Arbitrator's Signature  
Name

Public/Industry

Michael Fischetti  
Michael Fischetti

Public Arbitrator

Executed on:

~~Date of Decision:~~

December 3, 1991

Date of Decision: December 18, 1991