

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Robert D. & Sally P. Rogers

Claimants

vs.

CASE# 91-01769

AWARD

Merrill Lynch, Pierce Fenner
& Smith, Inc.Respondent
-----CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 7, 1991, Claimant Robert D. & Sally P. Rogers who appeared pro se, alleged that Respondent Merrill Lynch, Pierce Fenner & Smith, Inc. through their account representative, misled them into investing in a Lifetime Fund, and selling two Keystone Funds which caused sales charges in his account. The claimants further alleged that if all the sales charges been disclosed to them, they would not have invested in this fund.

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. through their in-house counsel Christopher D. Cavuoti, Esq. maintained that their Financial Consultant, Mr. Kowadla recommended the Lifetime Fund to the claimants, because they expressed dissatisfaction in the income they were receiving from the Keystone Funds, and that he thoroughly discussed this investment with the claimants prior to their purchase. The respondent further maintained that when the claimants wrote to the respondent firm because of the liquidation charges, the charges were credited to their account in the interest of good customer relations. The respondent also maintained that the investment was appropriate, properly presented, and requested by the claimants.

RELIEF REQUESTED

Claimants, Robert D. & Sally P. Rogers requested \$7,632.00 in actual damages.

Respondent Merrill Lynch, Pierce, Fenner, Smith, Inc. requested the claims of the claimants be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, **Edwin B. Kagan**, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on July 1, 1991 and by the Respondent on August 13, 1991.

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 Claimants Robert D. & Sally P. Rogers \$5480.96 in actual damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. shall pay \$150.00 to the Claimants as reimbursement.

AFFIRMATION

I, **Edwin B. Kagan**, 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.



Edwin B. Kagan

DATE OF DECISION: April 23, 1992