

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Al DuPre)

Case No. 91-02621

Name of Respondent(s))

Merrill Lynch Pierce Fenner & Smith Inc)
Michael Long)

REPRESENTATION

For Claimant, Al DuPre ("DuPre"): M. Baron Stanton, Esq. and George Hunter McMaster, Esq. of Tompkins and McMaster.

For Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Michael Long ("Long"): V. James Mann, Esq. of Merrill Lynch Pierce Fenner & Smith, Inc.

CASE INFORMATION

Statement of Claim filed: August 21, 1991. Claimant's Submission Agreement signed: August 21, 1991.

Respondents' Joint Statement of Answer filed: October 23, 1991

Respondents Submission Agreements signed by V. James Mann on October 17, 1991, on behalf of Respondents.

HEARING INFORMATION

On May 7 and 8, 1992, in Charlotte, North Carolina, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimants alleged: that Respondents breached their fiduciary duty to Claimant by purchasing securities not suited to Claimant's stated investment objectives; that Respondents falsely represented to Claimant that his account would be handled in a professional manner; that Respondents used devices, schemes or artifices to defraud Claimant, made false statements or failed to state material facts and engaged in acts, practices or courses of business which operated as a fraud or deceit on Claimant.

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Respondents denied all allegations of wrongdoing and alleged: that Claimant is an experienced and sophisticated business professional who acted on advice of his accountant on every matter connected with Respondents; that Claimant was provided with full disclosure and knew or should have known all material facts regarding his investments; that Respondents at all times acted reasonably and in accordance with their obligations to Claimant.

Respondents alleged the affirmative defenses of: bar of the Statute of Limitations; bar of Section 15 of the Code of Arbitration Procedure; bar of Laches; failure to state claim upon which relief can be granted; losses alleged proximately caused by Claimant's conduct, negligence or those of third party; failure to act to mitigate damages. Respondents further alleged the following affirmative defenses: Claimant expressly ordered, approved, authorized, participated in and ratified matters complained of; Claimant knowingly, willingly and voluntarily assumed investment risk; Claimant failed to use due diligence in monitoring managing and handling his own account.

RELIEF REQUESTED

Claimants requested actual damage of \$103,000.00, punitive damages, costs, interest and attorneys' fees.

Respondents requested dismissal of the Claim with costs to Claimant.

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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael Long, are found not liable and, therefore, all claims against them are hereby dismissed;
2. Claimant's request for punitive damages, attorney's fees, costs and expenses are denied.

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FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$200.00 non-refundable hearing session deposit previously paid by Claimant and the following Forum Fees are assessed:

Four (4) hearing sessions X \$750.00 = \$3,000.00.

Forum fees assessed against:

1. Claimant, in the amount of \$1,500.00, however, the NASD, Inc. shall offset this fee with the \$750.00 hearing session deposit previously paid by Claimant, thereby, Claimant owes forum fees in the amount of \$750.00;
2. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael Long, jointly and severally, in the amount of \$1,500.00.

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

Concurring Arbitrators' Signatures

/s/
John F. Snyder, Esq.

Public

/s/
R. Corson Rose

Industry

/s/
Hugh M. Eggen

Public

Date of Decision: June 4, 1992