

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Samuel Rea Jewell

and

91-02709

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Robert Brennan

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**REPRESENTATION OF PARTIES**

Claimant Samuel Rea Jewell was represented by Lael S. DeMuth, Esq of DeMuth & Kemp, Denver, Colorado.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Robert Brennan were represented by Nicholas R. Piccininni, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 29, 1991. Submission Agreement of Samuel Rea Jewell was signed on July 24, 1991.

Statement of Answer was filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. Robert Brennan, on or about April 13, 1992. Submission Agreement of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. was signed on April 14, 1992 by John R. Cummings. Submission Agreement of Robert Brennan was signed on April 21, 1992.

**HEARING INFORMATION**

The hearing was held on Thursday, January 14, 1993 for two (2) sessions and Friday, January 15, 1993 for two (2) sessions in Denver, Colorado for a total of four (4) sessions.

**CASE SUMMARY**

Claimant alleged that Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. Robert Brennan ("Respondents") failed to fully and completely disclose the nature and risks inherent in the

purchase of the Munienhanced Fund as compared to the securities which were sold to purchase the Munienhanced Fund. Claimant further alleged that Respondents were negligent in executing the sale of Munienhanced Fund. Claimant alleged that the acts of Respondents constituted violations of New York Stock Exchange and N.A.S.D. rules, section 17(a) of the Securities Act and section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and sections 11-51-501 and 11-51-604(3) and (4) of the Colorado Revised Statutes as well as the common law of the State of Colorado.

Respondents stated that Mr. Brennen recommended the purchase of shares of the Munienhanced Fund, Inc. and that the claimant fully approved and authorized the purchase. Respondents stated that Mr. Brennen explicitly explained that the fund was a non-diversified, closed-end fund and further explained that the fund's objective was to provide a high level of income and that the fund would attempt to achieve the objective by investing in a portfolio of long-term investment grade municipal obligations. The allegation that Respondents failed to execute the sale of Munienhanced Fund, Inc. was denied. Respondents stated that the Claimant may be confusing the settlement date reflected on the monthly statements with the actual trade date which would coincide with the date the order was given.

#### **RELIEF REQUESTED**

Claimant requested an award against Merrill Lynch, Pierce, Fenner & Smith, Inc. Robert Brennan in the amount of \$40,587.00, plus interest, costs and attorney's fees or in the alternative rescission of the sale of Munienhanced Fund shares with replacement of shares sold, interest as provided by law, costs and attorney's fees.

Respondents requested that the Statement of Claim be dismissed in its entirety and that they be awarded attorney's fees and costs incurred in connection with this proceeding.

#### **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 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 Robert Brennan shall be and hereby is liable for and shall pay to the Claimant Samuel Rea Jewell the sum of \$7,339.00 (seven thousand three hundred thirty nine dollars).

2. The claims asserted against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall be and hereby are dismissed in their entirety.
3. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

**FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$120.00 and shall retain as forum fees the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant. Respondent Robert Brennan shall be and hereby is liable for and shall pay to the NASD the sum of \$1,200.00 as additional forum fees.

Forum fees are calculated at the rate of \$400.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Donald P. Shwayder  
Donald P. Shwayder, Esq.  
Public Arbitrator, Presiding Chair

February 15, 1993

s/ Fred W. Roecker  
Fred W. Roecker  
Public Arbitrator

February 12, 1993

s/ Jeffrey A. Schaefer  
Jeffrey A. Schaefer  
Industry Arbitrator

February 13, 1993