

## N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
NASD Financial Center  
33 Whitehall Street  
New York, N.Y. 10004  
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In the Matter of the Arbitration BetweenName of Claimants

Steven M. and Rebecca A. Schneider

91-02965

Name of RespondentsMerrill Lynch Pierce Fenner & Smith Inc  
Keith A. Myers

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REPRESENTATION

For Claimants: Michael C. Lemke, Esq. of the law firm of MEYER, JEWELL &amp; LEMKE.

For Respondents: Michael E. Olney, Esq. of MERRILL LYNCH PIERCE, FENNER &amp; SMITH INC.

CASE INFORMATION

Statement of Claim filed: September 24, 1991.

Claimants Steven M. and Rebecca A. Schneider signed their submission agreements on October 17, 1991.

Statement of Answer filed by Respondents Merrill Lynch Pierce Fenner &amp; Smith Inc. and Keith A. Myers : November 19, 1991.

Respondent Merrill Lynch Pierce Fenner &amp; Smith Inc.'s Submission Agreement was signed on: November 14, 1991 and Respondent Keith A. Myers' Submission Agreement was signed on: October 21, 1991

HEARING INFORMATION

Hearing Dates/Sessions: July 15, 1992, 2 Sessions

Hearing Location: Louisville, Kentucky.

CASE SUMMARY

Claimants alleged on or about November 13, 1986, after they had made an inquiry as to the possibility of purchasing stocks, Respondent Keith A. Myers prepared a Standard Option Agreement in the name of Claimants as joint tenants leading them to believe the agreement was only to authorize stock transactions. Claimants maintained the Agreement was signed by Mr. Schneider on November 26, 1986, but upon her review never signed by Mrs. Schneider. Claimants further alleged that almost immediately after the incomplete execution of the Standard Option Agreement, Respondent Myers began numerous, speculative options trades, which were not authorized by Claimants, and were without their knowledge and consent. Claimants further alleged even though such use of their account had not been authorized, part of the above mentioned options trades were made on margin. Claimants further alleged that the options trades resulted in a net loss of \$23,295.39, and further losses in the form of margin interest not precisely known but not exceeding \$6,612.29. Claimants further alleged that trading in options was inappropriate for their account given their objectives, lack of experience in the market, and total resources and Respondent Mr. Myers knew or should have known that trading in options was inappropriate and unsuitable for Claimants. Claimants further alleged the conduct of Respondents was done knowingly and with the intent to deceive the Claimants and by using the means and instrumentalities of interstate commerce and such acts constituted a device, scheme or artifice to defraud the Claimants as well as a course of business that operated as a fraud upon them in violation of 15 USC section 78j(b) and 15 USC section 77q(a). Claimants further alleged that Respondent Merrill Lynch as a "controlling person" over Respondent Mr. Myers within 15 USC 78t, is, therefore, jointly and severally liable for his actions in that it failed to properly supervise him. Claimants also alleged that Respondents Myers and Merrill Lynch breached their fiduciary duty by the aforementioned acts.

Respondents maintained that in late September, 1986, Claimant Mr. Schneider telephoned Respondent Myers and told him he needed to access money from his account without liquidating a large portion of the securities in the account, this meant margining existing positions and, accordingly, the account was converted to margin status on September 19, 1986 when, upon information and belief, Claimants signed a margin agreement. Respondents further maintained that on November 7, 1986 upon Respondent Myers' recommendation Claimants converted their account into a Cash Management Account ("CMA account") that had a key feature of a securities margin account. Respondents Merrill Lynch and Keith A. Myers further maintained that in November, 1986, Claimant Mr. Schneider stated he had decided to trade in options. Respondents further maintained they discussed the risks of investing in stock and index options and furnished Mr. Schneider with an options prospectus. Respondents further maintained that Mr. Schneider on several occasions acknowledged the risk whenever he purchased options of any type. Respondents further maintained that on November 13, 1986, Claimant Mr. Schneider completed a Standard

Option Agreement for Claimants' account, and Respondent Keith A. Meyers signed the Agreement on that date and Mr. Schneider assured Respondent Keith A. Meyers that he and Mrs. Schneider would sign it forthwith and return it to him, which was necessary since the account was a joint account. In reliance of his assurance Respondent Mr. Myers began a series of solicited equity option purchases resulting from orders placed by Mr. Schneider. Respondents further maintained that the Standard Option Agreement was signed by Mr. Schneider on November 25, 1986 and it was sent back to Claimants for Mrs. Schneider to execute; however, Mrs. Schneider did not sign it although Mr. Schneider was certainly aware that option trades were occurring in the account. Respondents further maintained in no instance was there any order entered for Claimants' account that had not been placed by Claimant. Respondents further maintained that due to the level of activity in Claimants' account it was reviewed, and a letter was sent to them reiterating the risks of trading options and offering assistance with any questions or concerns. Respondents further maintained that the net result of Mr. Schneider's option trading was a net loss of \$12,461.29. Respondents also maintained that the last conversation which Mr. Myers had with any of the Claimants was with Mrs. Schneider where she told him that she did not hold him responsible for any of the losses which were attributable to market forces outside of Respondent Keith A. Meyers' control.

RELIEF REQUESTED

Claimants Steven A. Schneider and Rebecca A. Schneider requested:

1. actual damages in the amount of \$29,907.68;
2. interest from the date of their losses until paid in full;
3. an amount sufficient to compensate them for their mental and emotional stress;
4. costs and expenses of litigation, including reasonable attorneys' fees;
5. any other relief to which they may appear entitled.

Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Keith A. Myers requested:

1. the claim to be denied in all respects;
2. costs and expenses incurred, including reasonable attorneys' fees
3. any further relief as is deemed just and proper

OTHER ISSUES

The recording equipment malfunctioned during the hearing. All parties and their respective counsel were asked if they wished to stop the proceedings or if they would waive the requirement of a verbatim record and continue the proceedings. All parties and their counsel affirmatively waived having a verbatim record and elected to continue the proceedings.

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. The Respondents Keith A. Myers and Merrill Lynch Pierce Fenner & Smith, Inc. be and hereby are liable jointly and severally and shall pay to the Claimant Rebecca Schneider the sum of \$10,098.40 with said sum to bear prejudgment interest at the rate of 8% per annum from January 17, 1987 until the date of decision, and to bear post-judgment interest at the rate of 8% per annum until paid.
2. The Respondents Keith A. Myers and Merrill Lynch Pierce Fenner & Smith, Inc. be and hereby are liable jointly and severally and shall pay to the Claimant Steven Schneider the sum of \$2,362.39 with said sum to bear pre-judgment interest at the rate of 8% per annum from January 17, 1987 until the date of decision, and to bear post-judgment interest at the rate of 8% per annum until paid.
3. The Claimants' claims for mental and emotional stress are denied.
4. Each party shall bear their respective costs including attorneys' fees.


FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:


2 sessions X \$400.00 = \$800.00 minus hearing session deposit of  
\$400.00 = net \$400.00 due.

The Respondent Merrill Lynch Pierce Fenner & Smith, Inc. be and hereby is liable and shall pay to the NASD the sum of \$400.00 to represent forum fees and shall pay to the Claimants the sum of \$400.00 to reimburse them for the fees paid.

ARBITRATOR SIGNATURES

  
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Michael M. LoSavio, Esq.  
Public Arbitrator

  
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Stanley H. Tichenor  
Public Arbitrator

  
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Gerald B. Brenzel  
Industry Arbitrator

Date of Decision: September 17, 1992