

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
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimants

Aldo Caputo

91-03208

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Scott Steiner
Edmund Moriarty

REPRESENTATION

For Claimants: Jeffrey E. Michelson, Esq., of the law firm
of JEFFREY E. MICHELSON

For Respondents: Brian F. Amery, Esq., of the law firm of
BRESSLER, AMERY & ROSS

CASE INFORMATION

Statement of Claim filed: October 15, 1991.

Claimant's Submission Agreement signed on: October 7, 1991.

Statement of Answer filed by Respondents Merrill Lynch Pierce Fenner & Smith
Inc., Scott Steiner, and Edmund Moriarty on:
January 6, 1992.

Respondents Merrill Lynch Pierce Fenner & Smith Inc., Scott Steiner, and
Edmund Moriarty's Submission agreements signed on:
January 3, 1992

HEARING INFORMATION

Hearing date/Sessions: June 1, 1992, 2 Sessions
June 2, 1992, 2 Sessions

Pre-Hearing Conference: May 8, 1992

Hearing Location: NASD offices located in New York, NY

CASE SUMMARY

Claimant alleged that Respondent Merrill Lynch Pierce Fenner & Smith Inc., breached their contractual and legal duties to Claimant by failing to provide professional services in accordance with the rules and regulations of the NASD and NYSE in which they are members, and which rules are incorporated in Respondent's Account Agreement with Claimant. Claimant further alleged Respondents committed common law fraud, and breach of contractual and legal duties by misrepresenting the type, nature, and suitability of the securities, advising Claimant that the securities he purchased SCA Tax Exempt Fund Limited Partnership Beneficial Assignee Certificates (BACs) were "just like municipal bonds" while according to their own prospectus these BACs were "speculative securities", unsuitable for Claimant's account with Respondents knowing Claimant's position and age. Claimant also alleged Respondent Merrill Lynch Pierce Fenner & Smith Inc., breached their contractual and legal duties to Claimant by their failure to supervise their employees and registered representatives in connection with their sale of unsuitable investments to Claimant.

Respondents denied Claimant's allegation that they made material misrepresentations concerning the BACs, and they maintained Respondent Mr. Steiner fully discussed the nature of the securities and the risks associated with them. Respondents further maintained that at no time did Respondent Mr. Steiner represent to the Claimant that the BACs were "just like municipal bonds", and that Claimant as a long-time purchaser of revenue bonds and a long-time investor in real estate was fully aware of the risks involved with the BACs. Respondents further denied the BACs were unsuitable for Claimant's account, since he had the financial ability to withstand the risk of loss. Furthermore, the Respondents asserted they followed all applicable procedures for supervising Claimant's account.

Respondents claimed that prospectuses were sent to Claimant when he made his purchases which described the securities and detailed their risks, that Claimant knew or should have known their contents, and that Claimant received statements, reports, and distributions which he accepted after his purchases in 1986, and also after 1988 when Claimant asserted he first learned that the BACs could not be used for bank collateral.

On motion of Respondents, stipulation between the parties, and consent thereon of the Claimant, the claims were dismissed against Respondent Edmund Moriarty during the course of the proceeding.

RELIEF REQUESTED

Claimant requested:

- a. rescission of and return of Claimant's original investment of \$600,000.00 plus interest, and commission;
- b. attorneys fee and costs;
- c. \$1,000,000.00 in punitive damages;
- d. such other relief as the panel deems just and proper.

Respondents requested that the claim be dismissed with costs and attorney's fees assessed against Claimant.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and after reading the post-hearing briefs submitted by counsel for the parties, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by the Claimant against the Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Scott Steiner are dismissed in all respects.
2. The Claimant shall reimburse the Respondents the sum of \$500.00 representing one half of the adjournment fee.
3. 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:

4 sessions X \$1,000.00 = \$4,000.00 + 1 pre-hearing conference
(\$300.00) = \$4,300.00 less \$1,000.00 hearing session deposit =
\$3,300.00 due.

Claimant be and hereby is liable and shall pay to the N.A.S.D the sum of \$1,150.00 to represent forum fees. The Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Scott Steiner be and hereby are liable jointly and severally and shall pay to the N.A.S.D. the sum of \$2,150.00 to represent forum fees.

The N.A.S.D. shall retain the \$250.00 claim filing fee previously paid by the Claimant.

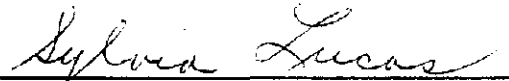
ARBITRATOR SIGNATURES



Edward M. Sills, Esq.
Public Arbitrator



Anthony Marchese
Industry Arbitrator



Sylvia Lucas
Public Arbitrator

Date of Decision: October 15, 1992

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 24th day of August, 1992, before me personally appeared **Edward M. Sills, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

JULIA WILE
NOTARY PUBLIC, State of New York
No. 4878615
Qualified in Nassau County
Commission Expires Dec. 15, 1993

JULIA WILE
NOTARY PUBLIC, State of New York
No. 4878615
Qualified in Nassau County
Commission Expires Dec. 15, 1993

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 6th day of October, 1992, before me personally appeared **Anthony Marchese** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

KATHLEEN A. MARINO
Notary Public, State of New York
Qualified in Nassau County
Commission Expires March 30, 1991
8/31/93

Anthony Marchese

STATE OF: New York
COUNTY OF: ~~New York~~ Westchester

S.S.:

On this 7th day of October, 1992, before me personally appeared **Sylvia Lucas** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

KATHLEEN A. MARINO
Notary Public, State of New York
Qualified in Nassau County
Commission Expires March 30, 1991

Marcia L. Kessler

MARCIA L. KESSLER
Notary Public, State of New York
No. 4744477
Qualified in Westchester County
Commission Expires January 31, 1994
March 24, 1994