

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between :

Marian Nall Martin :

Claimant :

vs. :

W. Johnston King :

Merrill Lynch, Pierce, Fenner & Smith, Inc. :

Respondents :  
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CASE #91-03427  
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 31, 1991, Claimant Marian Nall Martin, who appeared Pro Se, alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and W. Johnston King recommended an unsuitable investment in the Merrill Lynch High Income Bond Fund, and that she sold the investment at a large loss. The Claimant further alleged that she questioned the safety of this investment repeatedly, but that Respondent W. Johnston King used poor judgement in recommending this unsuitable investment to her.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and W. Johnston King through their in-house counsel, Christopher D. Cavuoti, Esq., maintained that this investment was suitable at the time it was recommended to the Claimant and that the Claimant's claims are without merit since she had made repeated investments into the fund over the past 10 years, and has made a profit on a total return basis. The Respondents also maintained that they acted in a reasonable manner, consistent with their obligations and responsibilities towards the Claimant.

RELIEF REQUESTED

Claimant, Marian Nall Martin requested \$10,000.00 in actual damages.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and W. Johnston King requested the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, James C. Bussart, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on October 22, 1991, by the Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on January 29, 1992 and by Respondent W. Johnston King on January 7, 1992.

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. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and W. Johnston King are jointly and severally liable and shall pay \$4,500.00 to Claimant Marian Nall Martin 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 Claimant shall be retained by the NASD, Inc. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and W. Johnston King shall pay \$150.00 to the Claimant as reimbursement.

AFFIRMATION

I, JAMES C. BUSSART, ESQ., 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.

  
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Signature of Arbitrator

DATE OF DECISION: August 18, 1992