

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Ephraim & Rose W. Ross

91-03511

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith Inc  
Sidney Kogan

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**REPRESENTATION**

For Claimants: Joseph Spiegel, Esq. sole practioner.

For Respondents: Clarence Pozza, Esq. of Miller, Canfield, Paddock & Stone.

**CASE INFORMATION**

Statement of Claim filed: October 21, 1991.

Claimants' Submission Agreement signed on: November 21, 1991.

Joint Statement of Answer filed by Respondent, February 4, 1992.

Respondent, Sidney Kogan's Submission Agreement signed on: April 6, 1992.

Respondent Merrill Lynch did not submit a Submission Agreement as required by the NASD Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Dates/Sessions:

September 15, 1992 - Prehearing Conference - 1 session.

April 7, 1993 - 2 sessions.

April 8, 1993 - 2 sessions.

Hearing Location: Embassy Suites in Southfield, MI.

### CASE SUMMARY

Claimants alleged that they asked Respondent Kogan, Account Executive employed by Respondent Merrill Lynch, to form an investment plan with the specific knowledge that the money to be invested was all the retirement funds the Claimants possessed, therefore the principal should not have been exposed to any loss or market risk. Claimants further alleged that from 1988 to 1989 Respondent Kogan caused Claimants to purchase nearly \$100,000.00 of Koger stock, a real estate stock that Respondents claimed to provide tax free income, was very secure, had no risk to principal and was supposedly an excellent investment for retirement. Claimants further alleged that in 1989, Koger stock dropped from \$28.00 to \$20.00 a share and when Claimants asked Respondent Kogan what to do, he told Claimants that he was keeping his stock and buying more, whereby, Claimants purchased \$33,000.00 more of Koger stock by liquidating their money market fund at the recommendation of Respondent Kogan. Claimants contended that Respondents failed to disclose the nature and scope of risks in the transactions, failed to determine suitability of circumstances, made misrepresentations and failed to disclose relevant facts.

Respondents maintained that Respondent Kogan accurately described Koger shares to Claimants, disclosed the nature and scope of risks, made a determination of suitability when required, disclosed commissions and all other material information. Respondents further maintained that the investments were suitable and there was sufficient diversification.

### RELIEF REQUESTED

Claimant requested \$100,000.00 in compensatory damages, rescission, interest, exemplary damages, costs, expenses and attorney's fees.

Respondent requested all claims be dismissed and awarded costs and Attorneys fees.

### 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. All Claims be and hereby are dismissed in their entirety.
2. Each party shall bear their own costs including Attorney's fee.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions x \$750.00 = \$300.00 (Prehearing Conference). = \$3,300.00 less \$750.00 hearing session deposit = \$2,550.00 net

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

Respondent Merrill Lynch be and hereby is liable and shall pay the NASD the sum of \$2,550.00 to represent forum fees.

The NASD shall retain the \$200.00 filing fee and \$750.00 hearing session deposit previously deposited by Claimant.

**ARBITRATORS' SIGNATURE**

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Edward C. Pedersen, Esq.  
Public Arbitrator

  
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Hugh R. Kennedy  
Public Arbitrator

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Kenneth A. Madsen  
Industry Arbitrator

Date of Decision: May 18, 1993

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