

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Donna Censoni  
Janet Censoni

CASE #91-03631

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith  
Scott Uffelman

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REPRESENTATION

For Claimants Donna Censoni and Janet Censoni: Joann M. Carlson, Esq. of the Law Office of Joann Carlson.

For Respondents Merrill Lynch, Pierce, Fenner & Smith and Scott Uffelman: Todd A. Zuckerbrod, Esq. in-house counsel at Merrill Lynch.

CASE INFORMATION

Statement of Claim filed: November 15, 1991.

Claimants' Submission Agreement signed on: November 27, 1991.

Joint Statement of Answer filed by Respondents on: March 4, 1992.

Respondent Merrill Lynch, Pierce, Fenner & Smith's Submission Agreement filed on March 3, 1992.

Respondent Scott Uffelman's Submission Agreement signed on: April 10, 1992.

HEARING INFORMATION

Hearing Dates/Sessions:      September 10, 1992 - 2 Sessions  
   October 15, 1992 - 2 Sessions

Hearing Location: Embassy Suites Hotel in Southfield, Michigan.

CASE SUMMARY

Claimants alleged that they opened a joint account at Respondent Merrill Lynch, Pierce, Fenner & Smith and Claimant Janet Censoni never actively participated in the operation of this account. Claimants further alleged Claimant Donna Censoni was inexperienced in securities trading and from time to time she engaged in trading activity, usually with the advice of Respondent Uffelman and he agreed he would only recommend safe and secure investments and that there would be little possibility of loss. Claimants' further alleged because of their lack of experience in securities trading and lack of understanding of the procedures involved in securities trading, Claimants totally relied upon the advice and recommendations of Respondents as fiduciaries in charge of the account funds. Claimants further alleged Respondents solicited and obtained Claimant's agreement to purchase an interest in ML Media Opportunity Partners, L.P. on the basis it was consistent with their investment objectives and Respondents misled her concerning the value and growth of the investment and failed to advise Claimants that no ready market existed for the investment. Claimants further alleged Respondents advised Claimants to purchase Merrill Lynch, High Yield Series 12 Fund, which Respondents represented would earn 14-15%. Claimant further alleged Respondents did not disclose the financial risks associated with the investment strategy or insure that Claimants were accurately informed of the risks, and the trading in Claimants account was unsuitable for them. Claimants further alleged Respondents' actions constituted statutory fraud under Michigan Blue Sky Law, the Federal Securities Act of 1933 and the Federal Securities Exchange Act of 1934, and Respondents violated NASD Rules of Fair Practice.

Respondents maintained Claimants authorized all of the purchases fully cognizant of the nature and risks associated with these investments and all the investments were suitable given their investment objectives, age, and understanding of the investments. Respondents further asserted the following defenses: Claimants failed to state a claim, estoppel, ratification, an failure to mitigate.

RELIEF REQUESTED

Claimants requested: compensatory damages in the amount of \$16,000.00, rescission of all transactions, interest, costs, expenses and attorneys' fees.

Respondents requested: to dismiss all claims in their entirety.

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, Merrill Lynch, Pierce, Fenner & Smith be and hereby is liable and shall pay Claimants the sum of \$6,015.22, conditioned upon Claimants returning to Respondent Merrill Lynch all shares of Merrill Lynch Media Opportunity Fund.
2. All claims against Respondents Scott Uffelman be and hereby are dismissed in their entirety.
3. Each party shall bear its own costs.

FORUM FEES

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

4 sessions x \$400.00 = \$1,600.00 less \$400.00 hearing session deposit = \$1,200.00 net due.

Forum fees Assessed Against:

Respondent Merrill Lynch, Pierce, Fenner & Smith be and hereby is liable and shall pay to the NASD the sum of \$1,200.00 to represent forum fees.

Respondent Merrill Lynch, Pierce, Fenner & Smith be and hereby is liable, and shall pay Claimants \$500.00 to represent filing fees.

The NASD shall retain the \$100.00 filing fee and \$400.00 hearing session deposit previously deposited by Claimant.


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

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CONCURRING ARBITRATORS' SIGNATURE

Name

Public/Industry

  
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Harry G. Hutchison, IV/Chairman

Public ✓  
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Public

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Harvey Frank

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Industry

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Gordon F. Knight, Ph.D

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Public

Date of Decision: November 6, 1992

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CONCURRING ARBITRATORS' SIGNATURE

Name	Public/Industry
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Harry G. Hutchison, IV/Chairman

Public

*Harvey Frank*  
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Industry

Gordon F. Knight, Ph.D

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CONCURRING ARBITRATORS' SIGNATURE

Name

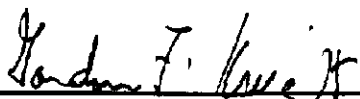
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Industry

  
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