

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Jerry Godsey and Anne Godsey

91-03720

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith Inc

REPRESENTATION

For Claimants, Jerry and Anne Godsey ("the Godseys"): Thomas E. Warner, Esq. of Warner, Fox, Seeley & Dungey.

For Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"): John J. Kilkenny, Esq. of Merrill Lynch.

CASE INFORMATION

Statement of Claim filed: November 26, 1991. Claimants' Submission Agreement signed: November 13, 1991.

Respondent's Statement of Answer filed: January 15, 1992. Respondent's Submission Agreement signed: January 9, 1992 by John J. Kilkenny on behalf of Merrill Lynch.

HEARING INFORMATION

On January 21 and 22, 1993, in Fort Lauderdale, Florida, a hearing lasting three (3) sessions was conducted.

CASE SUMMARY

Claimants alleged that Respondent liquidated their IRA accounts without their authorization and that despite timely notification of the error from them, Respondent neglected to reinstate their accounts within the required time period, causing Claimants substantial tax penalties and losses.

Respondent denied all allegations of wrongdoing contained in the Statement of Claim and maintained that Claimants gave an ambiguous written instruction with respect to their IRA accounts and that the accounts were liquidated and that upon discovering the error Claimants were unable to respond within the 60 day time span mandated by the Internal Revenue Code and that Respondent was therefore legally prevented from reinstating the IRA accounts.

RELIEF REQUESTED

Claimants requested an Award of approximately \$152,900.00 including taxes and interest as well as punitive damages of \$100,000.00. Claimants also requested attorneys' fees and costs.

Respondent requested that Claimants' Claims for damages be denied in all respects and that the costs of this action, including attorneys' fees be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Merrill Lynch, is found liable, and shall pay to the Claimants the amount of \$40,000.00, including costs.
2. Claimants' request for attorneys' fees is denied.
3. Claimants' request for punitive damages is denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

91-3720

page 3.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,250.00 (three sessions x \$750.00 per session).

Respondent is hereby assessed \$2,250.00, \$750.00 of which shall be paid directly to the Claimants, and \$1,500.00 of which shall be paid to the National Association of securities Dealers, Inc.

The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

/s/
Linda M. Granata, Esq.

Industry

/s/
Harold D. Powell, Jr.

Public

/s/
Burt R. Rose

Public

Date of Decision: FEBRUARY 26, 1993