

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Eleanor E. McCollough :

Claimant :

CASE #91-03748
AWARD

vs. :

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

Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 26, 1991, Claimant, Eleanor E. McCollough by and through David McCollough, alleged that in February, 1984 Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. brokers solicited her to invest in the mutual fund, Colonial Option Income Trust and in November 1984 solicited her to invest in another mutual fund, Kemper Option Income Fund by misrepresenting their future value; and these purchases were contrary to her previous investment history. Claimant further alleged that in February 1987 Respondent solicited the sales of both the Colonial Option Income Trust and Kemper Option Income Fund and recommended the purchase of Mass. Financials Lifetime Government Income Plus Trust, which caused commissions to be generated on all these transactions. Claimant contended that these investments were unsuitable for her limited investment experience and investment objectives. Claimant further contended that Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. violated their fiduciary responsibilities and Respondent John Bridge, Manager, failed to supervise the brokers, therefore, Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and John Bridge are liable for Claimant's losses.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and John Bridge by and through their in-house counsel Christopher D. Cavuoti, Esq., maintained that Claimant, Eleanor E. McCollough opened an account in November 1981 and her investment objective was for income, which was also the investment objective of the mutual funds Claimant invested in. Respondents further maintained that in February 1984, Claimant invested approximately \$5,000.00 into the Colonial Option Income Trust, a mutual fund whose primary investment objective is to seek a high current return and secondary

objective is relative stability in principal, at which time, the investment was delivered out from Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. upon purchase. Respondents further maintained that in November 1984 Claimant invested approximately \$5,000.00 into the Kemper Option Income Fund and in June 1986, she invested approximately \$10,000.00 more into this fund. Respondent contended that in February 1987 Claimant sold the Colonial and Kemper shares when shares of the MFS Lifetime Government Income Plus Trust were purchased and there was no sales charge upon the purchase. Respondent further contended that with all the mutual fund purchases made by Claimant, the shares were delivered out, therefore, all dividends and distributions were paid directly to Claimant. Respondents asserted that in April 1987 there was a sharp decline in the entire bond market which reflected an unforeseen surge in interest rates that caused a decline in all bond oriented mutual funds. Respondents further asserted that Claimant was in income oriented investments since the inception of her account and that Respondents were not fiduciaries for the account in that all decisions made to buy and sell could only be and were only made by Claimant.

Respondent, John Bridge filed a Motion to Dismiss pursuant to Section 25 of the NASD Code of Arbitration Procedure by asserting that his only involvement was to perform supervisory functions, and review and investigate Claimant's complaints. Respondent, John Bridge further asserted that he was not involved in any of the actions which directly brought about Claimant's claim for damages, therefore, he should be dismissed.

RELIEF REQUESTED

Claimant, Eleanor E. McCollough requested \$10,000.00 in actual damages plus interest.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and John Bridge requested the claim be denied and costs assessed against Claimant.

AWARD

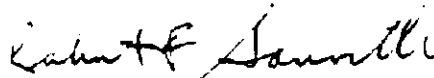
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert F. Sanville, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 22, 1992, by the Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. on March 12, 1992 and by the Respondent, John Bridge on February 18, 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. The claims of Claimant, Eleanor E. McCollough against Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and John Bridge are dismissed.
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, Eleanor E. McCollough shall be retained by the NASD, Inc. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and John Bridge are jointly and severally liable and shall pay to the Claimant the sum of \$75.00 as partial reimbursement.

AFFIRMATION

I, ROBERT F. SANVILLE, 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.



Signature of Arbitrator

DATE OF DECISION: July 1, 1992