

## NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between :

Mark H. Miller :

Claimant :

vs. :

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

Respondent :  
-----CASE #91-03813  
AWARDCASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 3, 1991, Claimant Mark H. Miller, who appeared Pro Se, alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. through its registered representative, Drew Mooney, convinced him to purchase 200 shares of Community Psychiatric stock, and that this stock was transferred to his account at Freeman Welwood without his knowledge or consent. The Claimant further alleged that, because he thought his broker Drew Mooney was following the stock, he didn't realize it had dropped in price until he read it in the newspaper, and that had he been informed of the price drop at an earlier time, he would not have had such a great loss.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. through its in-house counsel, Christopher Cavuoti, Esq., maintained that the Claimant made no inquiry as to why his shares of Community Psychiatric stock were no longer in his account, and that a casual examination of the February Account Statement would have made him aware that the stock was no longer in his account. The Respondent further maintained that Claimant Mark H. Miller signed a transfer authorization which transfers positions created in an account for up to one year, and that the firm of Freeman Welwood sent him account statements that indicated these shares were held there. The Respondent contended that there is no evidence that proves Claimant Mark Miller would have sold the shares for a profit if he had been informed of the price.

RELIEF REQUESTED

Claimant Mark H. Miller requested \$4,400.00 in actual damages.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. 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, Mary C. Eklund, 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 November 27, 1991 and by the Respondent on January 14, 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 the Claimant Mark H. Miller against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, **MARY C. EKLUND, 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: September 28, 1992