

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
:
Walter and Bernice Bell :
:
: Claimants : CASE #91-04056
: AWARD
vs. :
:
Merrill Lynch, Pierce, Fenner & Smith, Inc.:
Joseph Pawelski :
Joseph Podraza :
:
Respondents :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 23, 1991, Claimants, Walter and Bernice Bell who appeared Pro Se, alleged that in December 1989 their respective five year CD's matured in their IRA accounts, at which time, Respondent, Joseph Pawelski, their Financial Consultant for their account at Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., recommended the purchase of shares of UNISYS Corporation Preferred A stock for their IRA accounts by misrepresenting its future value and potential risk of loss. Claimants further alleged that in July 1990 they transferred their IRA accounts to Respondent's Merrill Lynch, Pierce, Fenner & Smith, Inc., Harrisburg branch office and their new Financial Consultant was Respondent, Joseph Podraza. Claimants contended that in December 1990 Respondent, Joseph Podraza suggested that they purchase a Mutual Fund but claimed they could wait until April in order to collect their 12% return on the Unisys stock, at which time, Respondent, Joseph Podraza made no comment about the status of the Unisys stock when Claimants decided to wait until April so they could build up their account. Claimants further contended that in February 1991 they contacted Respondent, Joseph Podraza in reference to an unfavorable article in the Wall Street Journal about the unisys stock, at which time, Respondent Joseph Podraza told them he would not have recommended Unisys for an IRA account and advised Claimants to contact their former Financial Consultant, Respondent, Joseph Pawelski. Claimants asserted that when they contacted Respondent, Joseph Pawelski about the Unisys stock, he advised them that he could not help them since Respondent, Joseph Podraza was their advisor. Claimants further asserted that the Unisys stock was unsuitable for their investment objective for safe income earning investments and Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Joseph Pawelski and Joseph Podraza's inappropriate

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recommendation and handling of their IRA accounts, caused them to sustain losses.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. Joseph Pawelski and Joseph Podraza by and through their in-house counsel Christopher D. Cavuoti, Esq., maintained that Respondent, Joseph Pawelski, Claimants Walter and Bernice Bell, former Financial Consultant in Respondent's Merrill Lynch, Pierce, Fenner & Smith, Inc. Buffalo office, was advised that Claimants primary investment objective was income and in December 1989, Claimants each had a CD maturing in their respective IRA accounts, at which time, Respondent Joseph Pawelski recommended Unisys Corporation Preferred A Stock paying a 12% return and Claimants instructed him to purchase shares for both of their accounts at \$36-3/8 per share. Respondents further maintained that in July 1990 Claimants transferred their IRA accounts to Respondent's Merrill Lynch, Pierce, Fenner & Smith, Inc. Harrisburg branch office, at which time, the Unisys Stock was trading at approximately \$32-1/4 per share and since the account had been transferred to Respondent, Joseph Podraza, another Financial Consultant, Respondent, Joseph Pawelski no longer maintained contact with Claimants. Respondents contended that in July 1990 when Claimants had transferred their accounts, Respondent, Joseph Podraza advised them to sell their shares of Unisys and invest in either the Merrill Lynch Short Term Global Fund, Certificates of Deposit ("CD") or both, at which time Claimants made the decision to keep their Unisys shares because they wanted the 12% return. Respondents further contended that in February 1991, when the negative news came out concerning the prospects of Unisys, stock, it was well over a year after Claimants purchase and 6 months after Respondent, Joseph Podraza's recommendation to sell. Respondents asserted that Respondent, Joseph Podraza never advised Claimants to contact their former Financial Consultant, Respondent, Joseph Pawelski, but actually informed them that there was nothing Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. could do for them under the circumstances. Respondents further asserted that they acted in a commercially reasonable manner, consistent with their obligations and responsibilities towards Claimants, and Claimants failed to mitigate their losses. therefore, Respondents, are not liable in any manner.

RELIEF REQUESTED

Claimants, Walter and Bernice Bell requested \$6,800.00 in actual damages plus interest and reimbursement of the NASD, Inc. filing fee.

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Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Joseph Pawelski and Joseph Podraza requested the claim be denied and costs be assessed against Claimants.

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 Claimants on December 16, 1991, by the Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. on February 13, 1992, by the Respondent, Joseph Pawelski on January 17, 1992 and by the Respondent, Joseph Podraza on January 23, 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 Claimants, Walter and Bernice Bell against Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Joseph Pawelski and Joseph Podraza 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 Claimants Walter & Bernice Bell shall be retained by the NASD, Inc. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. Joseph Pawelski and Joseph Podraza are jointly and severally liable and shall pay to the Claimants, 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 6, 1992