



Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimants

James E. and Elizabeth J. Monahan

92-00027

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
William E. Kelly

REPRESENTATION

For Claimants: Alan P. Fraade, Esq. of Mintz & Fraade.

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

For Respondent, William E. Kelly: William E. Kelly, Pro-Se.

CASE INFORMATION

Statement of Claim filed: January 2, 1992.

Claimants' Submission Agreement signed on: May 9, 1991

Statement of Answer filed by Respondent, Merrill Lynch Pierce Fenner & Smith on: April 13,
1992.

Respondent, Merrill Lynch Pierce Fenner & Smith's Submission Agreement signed on: April
9, 1992.

Statement of Answer filed by Respondent, William E. Kelly on: June 19, 1992.

Respondent, William E. Kelly's Submission Agreement signed: on June 17, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: November 10, 1992 - 2 Sessions.
December 14, 1992 - 1 Session.

Hearing Location: NASD Offices - New York, NY.

CASE SUMMARY

Claimants, allege that they were customers of Respondent, Merrill Lynch Pierce Fenner & Smith ("Merrill") and William E. Kelly ("Kelly"). Claimants allege that they told Kelly that their investment objectives were safe, income-producing investments without risks and preservation of capital. Claimants allege that Kelly recommended the purchase of MFS Lifetime Investment Plan Trust ("MFS"). Claimants allege that Kelly told them that the fund was fully invested in guaranteed government securities, that it had a high level of safety and that there was no commission fee. Claimants allege that they purchased shares of MFS based on Kelly's representations. Claimants allege that Respondents knew or should have known that Kelly's statements were untrue.

Respondent, Merrill, maintains that the Claimants received a prospectus for the investment in question which described the investment and outlined the commission fees. Merrill maintains that the prospectus does not guarantee the return of principal. Merrill maintains that the investment experienced a decline due to market conditions. Merrill maintains that the Claimants' investment was suitable given their stated investment objectives.

Respondent, Kelly, maintains that he met with the Claimants prior to investing their portfolio. Kelly maintains that the Claimants desired high income since their only other source of funds came from social security. Kelly maintains that during a meeting with the Claimants, he gave them a prospectus regarding MFS. Kelly maintains that he told the Claimants that MFS was a fairly new fund but that the investment advisor was experienced and had a good track record. Kelly denies that he told the Claimants he would not be paid a commission. Kelly maintains that he had Claimant, James E. Monahan, speak with an MFS representative who further explained the fund's make-up. Kelly maintains that he was in constant contact with the Claimants regarding the MFS investment. Kelly denies that he misrepresented the investment to the Claimants.

RELIEF REQUESTED

Claimants requested damages in the amount of \$23,256.09 plus pre-award interest, costs, disbursements and reasonable attorney's fees.

Respondent, Merrill, requested that the claims for damages be denied and that costs of this action, including attorney's fees, be assessed against the Claimants.

Respondent, Kelly, stated that he acted appropriately with respect to the Claimants' investment.

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 original remains on file with the NASD.

AWARD

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

- 1) Respondent, Merrill Lynch Pierce Fenner & Smith, is hereby liable and shall pay to the Claimants the sum of \$7,752.03 (SEVEN THOUSAND SEVEN HUNDRED FIFTY TWO DOLLARS AND THREE CENTS).
- 2) Respondent, William E. Kelly is hereby liable and shall pay to the Claimants the sum of \$7,752.03 (SEVEN THOUSAND SEVEN HUNDRED FIFTY TWO DOLLARS AND THREE CENTS).
- 3) The Claim for interest is hereby denied.
- 4) The parties shall bear their own costs of this action, including attorneys fees.

STATE OF New York ss.:

COUNTY OF New York

On this 17th day of February 1993, before me personally appeared Carolyn E. Wade, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

Maria Campese

MARIA A. CAMPESE
Notary Public, State of New York
No. 62-4906380
Qualified in Suffolk County 94
Commission Expires April 16, 1994

STATE OF New York ss.:

COUNTY OF New York

On this 17th day of February 1993, before me personally appeared Carolyn E. Wade, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

Maria Campese

MARIA A. CAMPESE
Notary Public, State of New York
No. 62-488380
Qualified in Suffolk County
Commission Expires April 18, 1994