

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Ann Stager

Claimant

**vs.**

**CASE #92-00138**  
**AWARD**

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Steve Quinley

Justin J. Hurd

## Respondents

### CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 14, 1992, Claimant, Ann Stager, who appeared Pro Se, alleged that she maintained an IRA account with Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Respondent, Steve Quinley, a registered representative recommended the purchase of National Gypsum Co. Bonds by withholding the potential risks and misrepresenting its probability of a high return. Claimant further alleged that Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Steve Quinley failed to properly ascertain her investment objectives and therefore, purchased unsuitable securities for her investment needs. Claimant contended that when she contacted Respondent, Steve Quinley with her concerns about holding this security, he advised her to purchase some of the current interest-bearing National Gypsum Co. Notes because of their high interest rate. Claimant further contended that Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. continually withheld facts about the investment's value and failed to notify Claimant when the securities value dropped, thus, she was unable to mitigate her losses. Claimant asserted that she notified Respondent, Justin J. Hurd, Assistant Vice President of Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. of the problems in relation to her account and requested restitution but received no consideration. Claimant further asserted that Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Justin J. Hurd's failure to supervise Respondent, Steve Quinley allowed him to mishandle her account, thus, creating losses.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc.,  
Steve Quinley and Justin J. Hurd by and through their in-house

counsel, Christopher D. Cavuoti, Esq. maintained that Claimant, Ann Stager has held her IRA rollover account with Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. since February 6, 1984 and that Respondent, Steve Quinley has serviced this account since that date. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Steve Quinley further maintained that Claimant informed them that her investments objectives were for the generation of high income and price appreciation. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Steve Quinley contended that on or about June 25, 1986 Claimant authorized the purchase of \$46,000.00 face amount of National Gypsum Co. Sub. Disc. Non-Interest to June 30, 1991, 15.50% due '04 Corporate Bonds, at which time, Claimant was made fully award by Respondent, Steve Quinley that there were risks to her principal associated with this investment, however, Claimant was willing to accept these risks in order to receive the anticipated higher yield over the long term. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Steve Quinley further contended that this investment was suitable for Claimant's investment objectives and she had made similar investments of this nature previously in her account. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Steve Quinley asserted that on or about August 18, 1988, Respondent, Steve Quinley; responding to Claimant's desire to achieve a higher return; recommended the purchase of \$15,000.00 face amount of National Gypsum Priority Senior Subordinated Notes, 11.375% Bond due March 31, 1997 to which Claimant responded enthusiastically and authorized the purchase. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Steve Quinley further asserted that Claimant received annual interest payments and Respondents believe the interest payments during this period were the primary reason Claimant never stated she would like to mitigate her losses and sell the Bonds at a more favorable price. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Steve Quinley argued that Claimant was fully engaged in her investment portfolio and made several unsolicited purchases, therefore, given her previous investment experience these investments fully met her investment objectives. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Steve Quinley further argued that, at all times, they acted in the best interest of Claimant and sought only to provide her with investment alternatives that clearly met her investment objectives, therefore, they cannot be held liable for Claimant's losses. Respondent, Justin J. Hurd filed a Motion to Dismiss asserting that his only involvement in the matter alleged by Claimant was purely administrative and in no way is Respondent, Justin J. Hurd in any way implicated as a party to the alleged which form the basis of Claimant's claim.

RELIEF REQUESTED

Claimant, Ann Stager requested \$9,000.00 in actual damages.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., Steve Quinley and Justin J. Hurd requested the claim be denied and the costs of this proceeding be assessed against Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Bruce T. Mitchell, 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 8, 1992, by the Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. on March 3, 1992 and by the Respondents, Steve Quinley and Justin J. Hurd on February 28, 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. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Steve Quinley are jointly and severally liable and shall pay to the Claimant, Ann Stager the sum of \$9,000.00 in damages.
2. The claim of Claimant, Ann Stager against Respondent, Justin J. Hurd is dismissed.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Ann Stager shall be retained by the NASD, Inc. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Steve Quinley are jointly and severally liable and shall pay to the Claimant, Ann Stager the sum of \$150.00 as reimbursement.

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AFFIRMATION

I, BRUCE T. MITCHELL, 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.

A handwritten signature in cursive script, appearing to read "Bruce T. Mitchell", is written above a horizontal line.

Signature of Arbitrator

DATE OF DECISION: June 29, 1992