

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Daniel L. Flanders

No. 92-00161

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.  
James E. Neunuebel

---

REPRESENTATION OF PARTIES

For Claimants: Major W. Park, Jr., Esq. of Gage & Tucker,  
Kansas City, Missouri.

For Respondents: Dennis M Pape, Esq. Vice President and Senior  
Counsel Merrill Lynch, Pierce, Fenner & Smith,  
Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: February 24, 1992.

Claimant's Submission Agreement signed on: December 30, 1992

Joint Statement of Answer filed by Respondents, Merrill Lynch,  
Pierce, Fenner, & Smith, Inc. & James E. Neunuebel on: April 21,  
1992.

Respondents Merrill Lynch, Pierce, Fenner & Smith's Submission  
Agreement signed on: April 16, 1992.

Respondent James E. Neunuebel's Submission Agreement signed on:  
April 21, 1992.

Amendment to the Statement of Claim filed: September 25, 1992.

#### **HEARING INFORMATION**

Hearing date: September 30, 1992. Three (3) sessions.

Hearing Location: Kansas City, Missouri

#### **CASE SUMMARY**

Claimant Daniel L. Flanders alleged violations of Section 20 of the Securities Exchange Act of 1934 and Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. Section 78J(b), and Rule 10b-5 promulgated thereunder; violation of the Missouri Securities Act, Section 409.101 and 409.411 R.S.Mo.; breach of fiduciary duty; common law fraud; negligence; and breach of contract by Respondents Merrill Lynch, Pierce, Fenner, and Smith, Inc. ("MLPFS") and James E. Neunuebel ("Neunuebel"). The allegations arose out of trades in Claimants Cash Management and Margin Accounts at MLPFS, Western Union Stock trades in particular, and also from trading in Stock Options in Claimant's Option Account at MLPFS.

For their joint Statement of Answer, MLPFS and Neunuebel jointly and individually denied each and every allegation of wrong doing and liability set forth in and implied by the Statement of Claim.

#### **RELIEF REQUESTED**

For counts I & II, claimant requested award of \$66,281.61 plus his costs and expenses incurred herein jointly against respondents.

For count III, claimant requested an award against Respondents, jointly and severally, for \$57,852.60, plus punitive or exemplary damages, plus his costs and expenses incurred herein.

For count IV, Claimant requested an award against respondents jointly and severally, in an amount representing his actual damages, plus punitive or exemplary damages, plus his costs and expenses incurred herein.

For counts V & VI, Claimant requested an award jointly and severally against Respondents for \$77,550.00, plus his costs and expenses incurred herein.

For Count VII, Claimant request an award against Respondents

jointly and severally, for \$57,852.60, plus his cost and expenses incurred herein.

Respondents requested that the arbitrators dismiss in full the arbitration claim, and to assess all costs against Claimant.

**OTHER ISSUES CONSIDERED & DECIDED**

On September 25, 1992, Claimant had filed a Motion to Amend his Statement of Claim by Interlineation. Respondents filed a response to the Motion on September 25, 1992. After the review of the Motion and response, the Arbitrators withheld ruling on the Motion until argument could be heard from the parties at the hearing. After Claimant presented his reasons for the Amendment, Respondents withdrew their objection to the Amendment.

The parties have agreed that the Award in this matter may be executed by a counterpart copy 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 originals remain on file with the NASD.

**AWARD**

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

1. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and James E. Neunuebel are jointly and severally liable for and shall pay to Claimant, Daniel L. Flanders the sum of \$1,667.00 as satisfaction of all of his claims herein.
2. Each party shall pay their own costs and attorneys' fees.
3. Claimant is liable for and shall pay one-half of the hearing session fees, and Respondents are jointly and severally liable for and shall pay one-half of the hearing session fees for this arbitration, as set forth more fully below.

**FORUM FEES**

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

3 hearing sessions X \$750.00 = \$ 2,250.00

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the nonrefundable filing fee in the amount of \$200, and shall retain the hearing session deposit in the amount of \$750 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$1,125.00 are assessed jointly and severally against Respondents.

Additional forum fees in the amount of \$375.00 are assessed against claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

September 30, 1992

/s/Robert G. Scott  
Robert G. Scott  
Presiding Chair

September 30, 1992

/s/David I. Lewin  
David I. Lewin  
Public Arbitrator

September 30, 1992

/s/Robert A. Goodwin  
Robert A. Goodwin  
Industry Arbitrator

Date of Service by the NASD:

October 7, 1992