

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

 In the Matter of the Arbitration Between :
 :
 John C. Gray, TTEE :
 :
 Claimant : CASE #92-00182
 : AWARD
 vs. :
 :
 Merrill Lynch, Pierce, Fenner & Smith, Inc.:
 :
 Respondent :

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 20, 1992, Claimant, John C. Gray who appeared Pro Se, alleged that in June 1989 Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. by and through their broker R.T. Edwards, recommended the sale of \$10,000.00 market value of Claimant's holdings in Southland Corp. Jr. Disc Non Int RG Bonds due December 15, 2007 and to use the proceeds from this purchase to purchase other securities, at which time, Claimant agreed to this recommendation because it would be a wash. Claimant further alleged that on July 3, 1989 Respondent purchased 50 shares of IBM for \$5,668.10 and on July 19, 1989 purchased \$5,000 of American Tax Credit, at which time, Respondent made these purchases on margin without Claimant's authorization and failed to sell the Southland Bonds. Claimant contended that he made repeated attempts to ascertain why Respondent did not sell the bonds to cover these purchases but received no reason. Claimant further contended that in October 1989 he authorized the sale of 50 shares of IBM stock for \$4,787.98 and 651 shares of Keystone Mutual Funds for \$5,661.35 in his account, to cover the margin balance caused by Respondent's failure to sell the Southland Bonds. Claimant asserted that he requested the balance of the interest charges from the margin account be cancelled. Claimant further asserted that through Respondent's broker, R.T. Edwards, negligence or unwillingness to act, he lost considerable part of his capital.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. by and through their in-house counsel Christopher D. Cavuoti, Esq., maintained that when Claimant placed the order to purchase 50 shares of IBM and 10,000 American Tax Credit Properties II L.P. in June 1989, no order was given to sell his Southland Corp. 0% '07 Bonds because Claimant would not accept a price of less than \$50.00 per bond. Respondent further maintained that at not time

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did Claimant instruct their broker, Mr. Edwards to sell his Southland Bonds at the market price and Claimant indicated that he was going to bring in new funds to cover the purchases, at which time, Claimant failed to make payment which resulted in a debit balance in his account and subsequent margin interest charges. Respondent contended that on October 3, 1989 Claimant visited Mr. Edwards and instructed him to sell enough share of the IBM stock and shares of the Keystone America High Yield Bond Fund to cover the debit balance in his account, at that same time, Claimant told Mr. Edwards that he did not wish to sell his Southland Bonds as his "loss was to big to take". Respondent further contended that Mr. Edwards stated that while he had spoken with Claimant on several occasions to keep him apprised of his investments, it was not until April 1990 that he became aware of Claimant's claim regarding a sale of his Southland Bonds. Respondent asserted that they acted in a commercially reasonable manner, consistent with its obligations and responsibilities towards Claimants and Claimant failed to mitigate any damage in this matter.

RELIEF REQUESTED

Claimant, John C. Gray requested \$9,836.00 in actual damages.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. requested the claim be denied and 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, Alfred R. Priest, 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 14, 1992 and by the Respondent 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. The claims of Claimant, John C. Gray against Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. are dismissed.

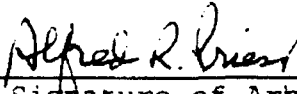
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2. The parties shall bear their respective costs.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc., by the Claimant John C. Gray shall be retained by the NASD, Inc.

AFFIRMATION

I, ALFRED R. PRIEST, 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