

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

### CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 22, 1992, Claimant, Debra A. Fetzich who appeared Pro Se, alleged that in February 1990 she contacted Respondent, Thomas Butenhoff, Account Executive, with Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. to discuss investing the funds that she had just received from a retirement trust fund, at which time, Respondent advised her to deposit the distribution check into her checking account and to give Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. a personal check instead of endorsing the check over to Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. Claimant further alleged that on March 1, 1990 she presented her personal check to Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Thomas Butenhoff and as a part of Respondent, Thomas Butenhoff sales presentation, he had provided literature regarding an investment in the Merrill Lynch Basic Value Fund including a prospectus along with a printout showing the value of compounding in an IRA account. Claimant contended that at the time of the initial discussion with Respondent, Thomas Butenhoff, she explained the source of the funds and specifically used the term "rollover". Claimant further contended that on March 9, 1990 she inquired as to why a credit of \$5.35 was appearing on her statement and Respondent, Thomas Butenhoff told her not to worry about it, at which time, he discussed paperwork that needed to be completed. Claimant asserted that at this point she took Respondent, Thomas Butenhoff's advice, wrote a check for \$5.35 and let Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. take care of the paperwork details of the rollover. Claimant further asserted that she assumed the investment was in an IRA until she received a tax reporting statement from Respondent, Merrill Lynch, Pierce, Fenner & Smith,

Inc. in January 1991. Claimant argued that Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Thomas Butenhoff were negligent in handling her account when there was ample evidence that the funds should have been in an IRA and they neglected to follow her instructions, thus, creating substantial financial losses to her due to tax penalties.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Thomas Butenhoff by and through their in-house counsel, Christopher D. Cavuoti, Esq., maintained that in early March, 1990 Claimant, Debra A. Fetzich opened a "CASH" account with Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Respondent, Thomas Butenhoff serviced this account. Respondents further maintained that prior to the opening of this account, Claimant met with Respondent, Thomas Butenhoff, at which time, Claimant failed to inform him that this was to be an IRA transaction, therefore, an IRA form was not used when opening this account. Respondent contended that Respondent, Thomas Butenhoff routinely gives information regarding IRA accounts to almost all of his new clients and the IRA information provided was not specifically prepared for Claimant. Respondents further contended that if Respondent, Thomas Butenhoff had known this account was to be an IRA, he would have advised Claimant that it was preferable to bring in the rollover check and endorse it to Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. because of the restrictions imposed on rollovers. Respondents asserted that on March 2, 1990 Claimant deposited a personal check in the amount of \$6,000.00 into her CASH account at Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. and the initial mutual fund purchase transaction made with the deposit would have been made for an amount just under, rather than over, \$6,000.00, at which time, the purchase would not then have exceeded the rollover amount, therefore, the extra \$5.35 would have alerted Respondent, Thomas Butenhoff to the situation had he known this was IRA rollover transaction. Respondents further asserted that Claimant was never given anything showing that she had an IRA account and her monthly account statements clearly indicated the type of account as "CASH". Respondents argued that Claimant opened a CASH account with Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. when she deposited a personal check and was put on notice with the arrival of her first account statement that she maintained a CASH account, thus, Claimant had the ability to correct the situation and failed to take any action to eliminate the damages she incurred.

RELIEF REQUESTED

Claimant, Debra A. Fetzich requested \$5,000.00 in actual damages plus the sum of \$450.00 in costs and reimbursement of the NASD filing fee.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Thomas Butenhoff requested the claim be denied and costs be assessed against Claimant.

AWARD

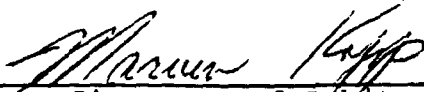
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Marvin Kopp, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 16, 1992, by the Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. on March 3, 1992 and by the Respondent, Thomas Butenhoff on February 10, 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. Respondent, Thomas Butenhoff is liable and shall pay to the Claimant, Debra A. Fetzich the sum of \$3,389.00 in damages inclusive of costs.
2. The claims of Claimant, Debra A. Fetzich against Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. are dismissed.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant, Debra A. Fetzich shall be retained by the NASD, Inc. Respondent, Thomas Butenhoff is liable and shall pay to the Claimant the sum of \$125.00 as reimbursement.

AFFIRMATION

I, **MARVIN KOPP**, 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.

  
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Signature of Arbitrator

DATE OF DECISION: August 7, 1992