

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Yolanda and Annelienes Hoffmann )

Name of Respondent(s) )

Merrill Lynch Pierce Fenner & Smith Inc )

William Laudani )

Case No. 92-00514

REPRESENTATION

For Claimants, Yolanda and Annelienes Hoffmann ("Hoffmann"): Dyanne E. Feinberg, Esq. of Gilbride, Heller & Brown.

For Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and William Laudani ("Laudani"): John J. Kilkenny, Esq. of Merrill Lynch.

CASE INFORMATION

Statement of Claim filed: February 11, 1992. Claimants' Submission Agreement signed: January 3, 1992.

Respondents, Merrill Lynch and Laudani's, Joint Statement of Answer filed: March 25, 1992. Respondents' Submission Agreement signed: March 12, 1992 by Laudani, and by John R. Cummings on behalf of Merrill Lynch on March 24, 1992.

HEARING INFORMATION

On September 30, 1992, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimant, Yolanda Hoffmann alleged that she is a divorcee of fifty four, of limited assets and minimal investment experience, that she opened an account with Respondents in 1980 and that later, in July of 1989, she added her daughter, Annelienes Hoffmann, as a joint tenant with right of survivorship. Claimant alleged that despite her stated investment objectives of safety and preservation of capital, Respondents, between April of 1988 and February of 1989, recommended that she purchase Corporate Investment Funds Hi-Yield Series 17, Series 22, Series 26 and Series 28 ("The Funds") which, Claimant alleged were investment trusts which were made up of non-investment grade

AWARD-#92-00514

debt obligations, also known as "junk bonds" and were highly unsuitable. Claimant maintained that as a result of the unsuitable recommendations, the fraudulent representations and Laudani's failure to diversify Claimants' investments, Respondents placed Claimants' capital at risk.

Respondents denied all allegations of wrongdoing and maintained that when Claimant opened her account with Respondents she had an expressed interest in good quality investments seeking income from intermediate term instruments and therefore purchased certificates of deposit ("CD"). Respondents added that when CD interest rates had declined from what Claimant had come to expect she inquired about investment alternatives with higher yields and that Laudani discussed the increased risks associated with the increased rewards of higher yields. Respondents maintained that Claimants have always been primarily interested in income to the virtual exclusion of other investment factors, that Claimants knowingly accepted the greater risk because Laudani informed them of the risks and M.L. confirmed it to them in writing when it mailed each prospectus and that there were no misrepresentations. Respondents contended that Claimants pursued an unfortunate investment strategy notwithstanding Laudani's recommendations to the contrary.

RELIEF REQUESTED

Claimants requested an award in the amount of \$27,275.54 out of pocket losses plus attorney's fees and punitive damages.

Respondents requested dismissal of the claim.

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 originals remain on file with the NASD.

AWARD

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

1. Respondents, Merrill Lynch and Laudani, are found liable, jointly and severally, and shall pay to the Claimants the amount of \$18,000.00.
2. Respondents, Merrill Lynch and Laudani, are also found liable, jointly and severally and shall pay to the Claimants the further amount of \$7,200.00 for attorney's fees pursuant to Section 517.211, Florida Statutes and/or the stipulation of the parties, to be paid directly to the attorney.
3. Claimants' request for punitive damages is denied.

AWARD-892-00514

OTHER COSTS

The parties shall each bear all other costs incurred by them in connection with this arbitration.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800.00 (two sessions x \$400.00 per session).

1. Claimants are hereby assessed \$400.00 for which the NASD shall retain the \$400.00 previously deposited by them in full satisfaction thereof.
2. Respondents, Merrill Lynch and Laudani, are hereby assessed \$400.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

The NASD shall retain the \$120.00 non refundable deposit previously paid by Claimants.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

/s/

\_\_\_\_\_  
Ronald Thomas Sparr, Esq.  
(Public/Chairman)

/s/

\_\_\_\_\_  
Penny N. Miller  
(Industry/Panelist)

/s/

\_\_\_\_\_  
Harry Polansky  
(Public/Panelist)

Date of Award: November 16, 1992