

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Frank J. and Dorothy E. Thornton

92-00569

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Howard A. Swart, Jr.

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REPRESENTATION

Claimants Frank J. and Dorothy E. Thornton ("Claimants") were represented by Karl C. Wehr, Esq.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Howard A. Swart, Jr. ("Respondents") were represented by Todd A. Zuckerbrod, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc.

CASE INFORMATION

Claimants' Statement of Claim filed on: February 14, 1992.

Claimants' Submission Agreement signed on: February 12, 1992.

Joint Statement of Answer filed by Respondents on: April 9, 1992.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed on: April 9, 1992.

Respondent Howard A. Swart's Submission Agreement signed on: March 25, 1992.

HEARING INFORMATION

Hearing Date/Session: September 4, 1992, 1 session

Hearing Location: NASD offices in Washington, DC.

CASE SUMMARY

Claimants alleged that as a result of Respondents negligent conduct in recommending the sale of Informix without a reasonable basis, Claimants suffered a loss. Claimants' alleged that Respondent Merrill Lynch failed to properly supervise its broker, Respondent Swart and that by virtue of its employment of Swart, Merrill Lynch is liable for the conduct of Swart.

Respondents denied all allegations of wrongdoing and that Swart properly handled Claimants' account at all times. Respondents maintained that Swart provided Claimants with reasonable investment advice. Respondents maintained that the basis for Claimants' claim is hindsight.

RELIEF REQUESTED

Claimants requested damages in the amount of \$25,750.00 plus costs and attorney's fees in the amount of \$2500.

Respondents requested that Claimants' claim be denied in its entirety, that it be awarded costs and attorney's fees in the amount of \$5000.

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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claim is denied in its entirety.
2. That all parties shall bear their costs including attorneys' fees.
3. That all other claims and counterclaims are denied in their entirety.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

That Claimants are assessed \$400 in forum fees in this matter, however, Claimants are entitled to offset this amount with their hearing session deposit of \$400 so that no more monies are due from Claimants.

Concurring Arbitrators' Signatures:

Name

Public/Industry

\_\_\_\_\_/s/\_\_\_\_\_  
Perry E. Wallace, Jr., Esq.  
Chairman

\_\_\_\_\_  
Public Arbitrator

\_\_\_\_\_/s/\_\_\_\_\_  
George R. Hamaway

\_\_\_\_\_  
Industry Arbitrator

\_\_\_\_\_/s/\_\_\_\_\_  
Peter B. Peard

\_\_\_\_\_  
Public Arbitrator

Date of Decision: September 4th, 1992