

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Richard L.H. Keeling;
Betty J. Keeling;
Estate of Corinne H. Lewis

92-00672

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.;
Richard F. Lord

REPRESENTATION

For Claimants: Richard L.H. Keeling, Betty J. Keeling and the Estate of Corinne H. Lewis were represented by G. Wade Caldwell, Esq. of San Antonio, Texas.

For Respondents: Merrill Lynch, Pierce, Fenner & Smith, Inc. and Richard F. Lord were represented by A. Michael Ferrill, Esq. and Margaret P. Sullivan, Esq. of Cox & Smith Incorporated, located in San Antonio, Texas.

CASE INFORMATION

Statement of Claim filed: February 25, 1992.

Claimant Richard L. H. Keeling's Submission Agreement signed on: March 16, 1992.

Claimant Betty J. Keeling's Submission Agreement signed on: March 16, 1992.

Claimant The Estate of Corinne H. Lewis' Submission Agreement signed on: April 23, 1992 by Betty J. Keeling, as Independent Executrix of the Estate of Corinne H. Lewis.

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Richard F. Lord on: July 15, 1992.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed on: June 23, 1992 by Michael J. Stewart, First Vice President and Assistant General Counsel,

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Respondent Richard F. Long's Submission Agreement signed on: July 13, 1992.

HEARING INFORMATION

Pre-Hearing Conference: February 4, 1993 before Arbitrator Kathryn P. Beller.
Hearing Dates/Sessions: February 25, 1993 for Two (2) sessions;
February 26, 1993 for Two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimants Richard L. H. Keeling, Betty J. Keeling and the Estate of Corinne H. Lewis alleged that Respondent Richard F. Lord ("Lord"), while employed by or acting as an agent for Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), made false representations to them in order to place their funds in unsuitable investments, including high risk, junk bonds; preferred stocks; speculative start-up, low capitalization company stocks; and options. In furtherance of the claim, Claimants alleged that they had little experience with securities and were not sophisticated in the selection of stocks, bonds, the risks of such securities, and the risks of writing options. Claimants further alleged that in February of 1987, Lord began the unauthorized trade of uncovered call options in the account of the Estate Claimant. Claimants also alleged that the investment strategies and trades were made solely to increase the brokerage commissions and that Merrill Lynch failed to adequately monitor the account or Lord's activities.

Respondents Merrill Lynch and Lord denied the material allegations of the Statement of Claim, alleging that:

1. The Claimants came to Merrill Lynch in mid-1985, seeking a greater return that they were receiving on their investments. Lord spent several hours discussing with Claimants their investment objectives, ways to meet these objectives, their investment experience and financial circumstances. Claimants were provided with materials explaining the operation of the accounts and the risks involved in the types of investments in the accounts;
2. Claimants were in frequent communication with Lord via telephone and personal visits to his office. The accounts were not discretionary and each position was discussed with Claimants before it was established and approved in advance. Confirmation and monthly statements were provided to the Claimants and Lord frequently met with Mr. Keeling to discuss the monthly statements;

3. Mr. Keeling expressed the desire to implement the options strategy in order to generate additional income. Lord explained the mechanics of option writing, the potential risks and rewards, and provided materials explaining the same; and
4. The market decline of October 1987 had the primary effect on the Claimants' accounts and the broker is not an insurer of the investments of its customers.

RELIEF REQUESTED

Claimants requested entry of an award against Respondents in the sum of \$72,457.91, plus a fair return of their original investment; all brokerage fees received by Respondents from the Estate Claimant for options trading be refunded to it; reasonable attorneys' fees, costs and expenses; and an additional sum equal to two times the total of all other awards be awarded to assure that this type of action does not occur again.

Respondents requested that Claimants take nothing on their claims and that the claims be dismissed.

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.

OTHER COSTS

The National Association of Securities Dealers, Inc. ("NASD") shall retain the \$750.00 adjournment fee previously deposited by Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc.

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. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) sessions x \$750.00 per session = \$3,000.00.

The NASD shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimants Richard L.H. Keeling, Betty J. Keeling and The Estate of Corinne H. Lewis. Claimants Richard L.H. Keeling and Betty J. Keeling are jointly and severally liable for and shall pay to the NASD additional forum fees in the sum of \$750.00. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Richard F. Lord are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$1,500.00.

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

Concurring Arbitrators' Signatures

Name

Date

Kathryn P. Beller
Kathryn P. Beller
Public Arbitrator
Chairperson

May 17, 1993

Richard A. Hollenberg
Richard A. Hollenberg
Public Arbitrator

May 19, 1993

Thomas H. Vann
Thomas H. Vann
Industry Arbitrator

May 21, 1993

Date of Service on Parties: 5-26-93