

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Marilyn A. Levy

92-00721

Name of Respondent(s)

Merrill Lynch, Pierce Fenner & Smith Inc
Patrick J. Aubry

REPRESENTATION

For Claimant: Jane L. Stafford, Esq. of Mitchell, Kristl & Lieber, P.C.,
Kansas City, Missouri.

For Respondent: Todd A. Zuckerbrod, Esq. Assistant Vice President and Senior
attorney of Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York,
and Gordon Gee, Esq. of Ziegfried, Bingham, Levy, Selzer & Gee, Kansas City,
Missouri.

CASE INFORMATION

Statement of Claim filed: February 27, 1992.

Claimant's Submission Agreement signed on: February 20, 1992.

Joint Statement of Answer filed by Respondent, Merrill Lynch, Pierce, Fenner
& Smith, Inc., Patrick J. Aubry on: April 24, 1992.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission
Agreement signed on: April 24, 1992.

Respondent Patrick J. Aubry's Submission Agreement signed on: April 14,
1992.

HEARING INFORMATION

Pre-Hearing Conference: August 20, 1992. One (1) session.

Hearing Date: August 25, 1992. Two (2) sessions.

Hearing Location: Kansas City, Missouri

CASE SUMMARY

Claimant Marilyn A. Levy ("Claimant") alleged unsuitability, misrepresentations, breach of fiduciary duty, violation of the New York Stock Exchange Rules, common law fraud, and breach of contract by Respondents Patrick J. Aubry and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondents"). The allegations arose from transactions in: Franklin Custodian Funds, Inc. U.S. Government Securities Fund; Franklin Age High Income Fund; the Merrill Lynch Corporate Bond Fund, Inc.; and a Cash Management Account.

In their Statement of Answer, Respondents denied each and every allegation contained in the Statement of Claim. In addition Respondents asserted the following affirmative defenses:

1. The Statement of Claim fails to state a claim for which relief may be granted.
2. Claimant is estopped from asserting the claims set forth in the Statement of Claim due to her own acts and conduct.
3. Claimant, acting with full knowledge of the facts, ratified, approved, accepted, acquiesced in and confirmed in all respects the acts complained of in the Statement of Claim.
4. The Claimant failed to mitigate her alleged damages, if any.

RELIEF REQUESTED

Claimant requested an award in the amount of \$70,916.00, plus attorney's fees, interest, other costs allowed by law, and punitive damages in the amount of \$25,000.00 or such punitive damages as are fair and reasonable.

Respondents requested that the panel deny the Claimant's Statement of Claim in its entirety and assess the costs of these proceedings against her.

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 original remains on file with the NASD.

NASD

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. Claimant, Marilyn A. Levy's claims against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Patrick J. Aubry are hereby denied and dismissed with prejudice.
2. The parties shall bear their own costs and attorneys' fees of this arbitration.
3. Claimant is liable for one-half of the forum fees, and Respondents are jointly and severally liable for one-half of the forum fees, as set forth more fully below.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

1 pre-hearing conference session X \$300.00 = \$300.00

2 pre-hearing sessions X \$600.00 = \$1,200.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$150.00 and shall retain the hearing session deposit in the amount of \$600.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$150.00 are assessed against Claimant, Marilyn A. Levy.

Additional forum fees in the amount of \$750.00 are assessed jointly and severally against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Patrick J. Aubry.

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

CONCERNING ARBITRATORS

Dated

By

August 25, 1992

s/s William Peters
William Peters
Presiding Chair
Public Arbitrator

August 25, 1992

s/s Thomas Lavin
Thomas Lavin
Public Arbitrator

August 25, 1992

s/s Walter Knowles
Walter Knowles
Industry Arbitrator

Date of Service by the NASD: August 31, 1992