

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Henry and Beatriz Esther K. Katina

Case No. 92-01079

Name of Respondent(s)

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Rebecca Gault

REPRESENTATION

For Claimants, Henry and Beatriz Esther K. Katina ("Katina"): Arthur P. Fisch, Esq. of Fisch & Kaufman.

For Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("ML") and Rebecca Gault ("Gault"): Robert E. Goldberg, Esq. of ML

CASE INFORMATION

Statement of Claim filed: March 26, 1992. Claimants' Submission Agreement signed: March 31, 1992.

Respondents' Joint Statement of Answer filed: June 12, 1992. Respondents' Submission Agreements signed: June 5, 1992 by Gault, and June 8, 1992 by Eric M. Rosenberg on behalf of ML.

HEARING INFORMATION

On March 11, 1993, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions was conducted.

CASE SUMMARY

Claimants alleged that Claimants' investment objectives were moderate capital growth with limited risk; that Respondents, through Gault, recommended and effected trades in unsuitable "junk" bond funds; made misrepresentations of and omitted to state material facts; breached their fiduciary duties to Claimants; and, that as a result, Claimants suffered a loss.

Respondents denied all allegations of wrongdoing and alleged that Claimants' accounts were serviced in a lawful, competent and professional manner; that Mr. Katina is a sophisticated and experienced investor with accounts at several firms; that Mr. Katina's objectives included speculation and he directed all activity in his accounts; Mr. Katina had previously speculated in his account against the advice of Gault; Mr. Katina sought out high yield low quality bonds; that Respondents provided prospectuses for both bond funds in connection with the purchases; Gault attempted to dissuade the large investment made and fully disclosed the risks and low quality of the bonds; and, Claimants have greatly exaggerated their losses.

Respondents alleged the affirmative defenses of failure to state a claim, bar by statute of limitation and laches; estoppel; ratification, approval and acquiescence; failure to use due diligence; negligence; failure to mitigate; and, no loss caused by Respondents.

RELIEF REQUESTED

Claimant requested damages of \$295,410.00, plus lost interest of \$62,000.00, attorney's fees of \$45,000.00 and other relief.

Respondents requested dismissal, costs and other relief.

OTHER ISSUES CONSIDERED & DECIDED

1. At the beginning of the hearing, Claimants withdrew Mrs. Katina as a party with the consent of Respondents. This Panel permitted her dismissal.
2. 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, ML and Gault, are found not liable and, therefore, all claims against them are dismissed.
2. Claimants' request for attorney's fees is denied.

OTHER COSTS

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

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,500.00 (two sessions x \$750.00).
 2. Claimant, Henry Katina, is hereby assessed \$1,500.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due of \$750.00 payable to the National Association of Securities Dealers, Inc.
 3. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.
- Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

 /s/
Steven Goerke, Esq.

Public

 /s/
Guy D. Drake

Industry

 /s/
Arnold Sarrow

Public

Date of Decision: **MARCH 24, 1993**