

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Patricia Horn

NASD Arbitration
No.92-01185

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith
Bateman Eichler, Hill Richards

REPRESENTATION

For Claimant: Ellen R. Rosen, Esq., Simke, Chodos, Silberfeld & Anteau, Inc.,
Los Angeles, California

For Respondent Merrill Lynch: V. James Mann, Esq., Merrill Lynch, Pierce,
Fenner & Smith, New York, NY

For Respondent Bateman Eichler: David Hinshaw, Esq., Gansinger Hinshaw and
Buckley, Los Angeles, California

CASE INFORMATION

Statement of Claim filed: April 6, 1992

Claimant's Submission Agreement signed: March 23, 1992

Statements of Answer filed:

Merrill Lynch:	June 2, 1992
Bateman Eichler:	June 17, 1992

OTHER ISSUES

At the first hearing session, Respondents jointly moved to dismiss the claim based on Claimant's failure to name an indispensable party, failure to disclose material facts, and failure to state a cause of action for which relief can be granted.

The panel denied the Motion without prejudice until after the presentation of Claimant's case.

At the conclusion of Claimant's case, Respondents renewed the Motion to Dismiss.

1. The Motion to Dismiss is granted as to both Respondents.
2. Each party shall bear its respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall refund the \$1,000.00 hearing session fee previously deposited by Claimant.

No forum fees are assessed.

ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
Norman R. Cohen	Public Chairperson
	Public Panelist
	Industry Panelist

Concurring Arbitrators' Signatures



Date Served: 06/23/93

Respondents' Submission Agreements signed:

Merrill Lynch: May 29, 1992

Bateman Eichler: June 16, 1992

HEARING INFORMATION

Hearing Dates/Sessions:	March 3, 1993	-	3 sessions
	March 4, 1993	-	2 sessions
	June 4, 1993	-	2 sessions

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged fraud, negligent misrepresentation, conversion, breach of contract, unjust enrichment, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, negligence and violations of the California Corporations Code arising out of investments in mutual funds.

Respondents each denied the allegations. Respondent Bateman Eichler asserted it had no liability to Claimant because the one securities transaction in her Bateman Eichler accounts was directed by Claimant and realized a profit. Merrill Lynch asserted that Claimant suffered no damages as a result of activity in her Merrill Lynch accounts, that there were no securities purchased in the CMA account and just two purchases in the IRA account.

RELIEF REQUESTED

Claimant requested compensatory damages of \$686,000.00, plus punitive damages, interest, and emotional distress damages.

Respondents requested dismissal of all claims and an award of costs of arbitration and attorney's fees.