

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Jeanne S. Samples

No. 92-01221

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Stephen C. Neff

REPRESENTATION OF PARTIES

For Claimant: David C. Anson, Esq. of DeConcini, McDonald, Brammer, Yetwin & Lacy, Tucson, Arizona.

For Respondents: Dennis M. Pape, Esq., Vice President, Office of the General Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: April 6, 1992.

Claimant's Supplement to the Statement of Claim filed on or about: April 26, 1993.

Claimant's Submission Agreement signed: March 26, 1992.

Joint Statement of Answer filed by Respondents on or about: May 5, 1992.

The NASD does not have a record of Respondents' filing Submissions to arbitration.

HEARING INFORMATION

Hearing dates: January 12, 1994. Two (2) sessions.

Hearing Location: Scottsdale, Arizona

CASE SUMMARY

Claimant, Jeanne S. Samples ("Claimant") alleged that Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Stephen C. Neff ("Respondents"): Were negligent in soliciting Claimant to invest in unsuitable investments; breached their contract with, and their fiduciary to the Claimant; made untrue statements of material facts and omitted to state material facts; violated Arizona Revised Statutes, Section 44-1991, et seq., and Arizona Revised Statutes, Section 44-1521 et seq.; and violated Arizona Revised Statutes, Section 13-2301, et seq., and Arizona Revised Statutes, Section 13-2314. The allegations arose out of transactions in San Diego Gas & Electric stock, Savannah Electric Power stock, Maricopa Co. Az. SD 95 Queens Crk. MBIA 13% of 7-1-87 bond, Maricopa Cnty. Ariz. Sch. Dist. No. 045 Fowler MBIA 12% 7-1-88 bond, and Salt River Pj. Az. AI PD EL RV SR B 9.25% 1-1-20 bond, amongst others more fully discussed at the hearing.

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

1. Claimant's claim is not eligible for submission pursuant to Section 15 of the NASD Code of Arbitration Procedure (the "Code").
2. All claims under Arizona Revised Statutes Sections 44-1991 and 44-1521 are time barred pursuant to their applicable two year and one year respective Statutes of Limitations. All claims for breach of contract and fiduciary duty are also time barred.
3. The Statement of Claim filed totally distorts and misrepresents the facts and circumstances surrounding the investments at issue.
4. Respondents did not violate Arizona Revised Statutes Section 44-1991 or section 14-1521.
5. Respondents did not violate the Arizona Anti-Racketeering Statutes nor did they commit any act that would make such Statute applicable to this case.
6. Respondents did not breach any contract with or any duty owed to the Claimant.
7. Each and every transaction recommended to Claimant by Respondents was suitable for her account and investment objectives.
8. No misrepresentations were made to Claimant, nor were any material facts that were necessary to be disclosed ever omitted in Respondents' dealings with Claimant.
9. Claimant's losses are due to her own negligence and

contributory negligence.

10. Claimant is an adult, responsible for her own acts.

RELIEF REQUESTED

Claimant requested an award against Respondents for compensatory damages in the amount of \$175,443.00, attorney's fees, costs, and punitive damages, and RICO damages.

Respondent requested that the arbitrators dismiss in full Claimant's claim and assess all costs against her.

OTHER ISSUES CONSIDERED & DECIDED

In their Statement of Answer, Respondents made a Motion to the Director of Arbitration to Dismiss the Statement of Claim as ineligible for submission pursuant to Section 15 of the Code. After reviewing the motion and responses, the Director grant the motion as to purchases that took place prior to March 26, 1986. Claims relating to purchases prior to March 26, 1986 were allowed to go to the panel as to allegations arising after March 26, 1986.

Respondents did not file with the NASD a properly executed submission to arbitration but are required to submit to arbitration pursuant to Section 12 of the Code and having answered the claim, appeared and testified at the hearing, are required to submit to arbitration and therefore are bound by the determination of the panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed by 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(s) 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. Claimant's claims against Respondent Stephen C. Neff are hereby denied and dismissed with prejudice.
2. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for, and shall pay to Claimant, Jeanne S. Samples the sum of \$10,000.00 as satisfaction for her claim for compensatory damages.
3. Claimant's claims for punitive damages, RICO damages, and attorney's fees and costs are hereby denied and dismissed with prejudice.

OTHER COSTS

Each party shall pay their own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth more fully below.

Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable for, and shall pay to the Claimant, Jeanne S. Samples the sum of \$1,000.00 as reimbursement for her hearing session deposit paid when she filed her claim.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following forum fees are assessed:

2 hearing sessions x \$1,000.00 = \$2,000.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$250.00, and shall RETAIN the hearing session deposit in the amount of \$1,000.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$1,000.00 are assessed against Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc.

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

CONCURRING ARBITRATORS

Dated:

Name:

January 28, 1994

George A. Schade, Jr./s/
George A. Schade, Jr.
Presiding Chair
Public Arbitrator

January 28, 1994

Arthur Spoon/s/
Arthur Spoon
Public Arbitrator

February 4, 1994

William E. Saufley/s/
William E. Saufley
Industry Arbitrator

Date of Service by the NASD:

Feb. 10 1994