

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Jerry and Sandra Apple

Claimants

CASE #92-01238  
AWARD

vs.

Merill Lynch, Pierce, Fenner & Smith, Inc.  
Stephen B. Wicker

Respondents

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 9, 1992, Claimants Jerry and Sandra Apple who appeared Pro Se, alleged that Respondent Stephen B. Wicker, Financial Consultant, representing Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and acting agent for Crown Life, sold them a qualified retirement plan which was in fact an adjustable life policy. Claimants further alleged that Respondent Stephen B. Wicker represented to Claimants that the policy was an insured retirement plan, not a supplement to their existing retirement plan. Claimants contended that they paid \$8,000.00 into the plan by Respondent Stephen B. Wicker's misrepresentations and Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s failure to supervise, therefore, Respondents are liable for their damages.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Stephen B. Wicker by and through their in-house counsel Christopher D. Cavuoti, Esq., maintained that Claimants Jerry and Sandra Apple's investment objectives were income and capital appreciation for the intermediate term, with risk factors from investment grade to speculative whereby they were interested in supplementing their IRA's. Respondents further maintained that Respondent Stephen B. Wicker presented Claimants with the plan and mailed them a brochure on the plan, in addition to fully explaining the plan to them. Respondents contended that Claimants received copies of their insurance policies and were given a ten day free look period which they could elect to cancel with no penalty and receive a full refund, at which time, Claimants elected to keep their policies.

**RELIEF REQUESTED**

Claimants Jerry and Sandra Apple requested \$3,772.73 in actual damages.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Stephen B. Wicker requested the claim be denied.

**AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Lisa R. Browning, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on April 2, 1992 and by the Respondent Stephen B. Wicker on May 7, 1992 and by the Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on May 18, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

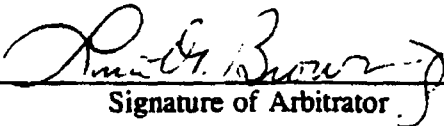
1. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to the Claimants Jerry and Sandra Apple the sum of \$8,000.00 in actual damage in return for Claimants endorsing over the policy to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.
2. The claim of Claimants Jerry and Sandra Apple against Respondent Stephen B. Wicker is dismissed.
3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Jerry and Sandra Apple shall be retained by the NASD, Inc.
5. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to the Claimants the sum of \$125.00 as reimbursement.

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**AFFIRMATION**

I, **LISA R. BROWNING**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

DATE OF DECISION: *January 6, 1993*

DATED BY THE NASD, INC.: January 15, 1993