

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Alanna P. Tait

92-01328

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc

REPRESENTATION

For Claimant: Arnold Weiss, Esq. of Raichle, Banning, Weiss & Stephens.

For Respondent: Elizabeth G. Armstrong, Esq. of Merrill Lynch Pierce Fenner & Smith Inc.

CASE INFORMATION

Statement of Claim filed: April 10, 1992.

Claimant's Submission Agreement signed on: April 1, 1992.

Statement of Answer filed by Respondent, Merrill Lynch, Pierce, Fenner & Smith Inc. on: June 19, 1992.

Respondent, Merrill Lynch, Pierce, Fenner & Smith Inc.'s Submission Agreement signed on: June 19, 1992.

HEARING INFORMATION

Hearing Date/Sessions: January 14, 1993 - Two Sessions.

Hearing Location: Hyatt Regency - Buffalo, New York.

CASE SUMMARY

Claimant alleges that Respondent recommended that she purchase an annuity and life insurance policy which Claimant understood to have a cash surrender value which could be realized or borrowed against at any time. Claimant alleges that Respondent misrepresented or wrongfully omitted and failed to inform her of material facts regarding the investment, including the fact that the annuity could not be canceled for 40 years and that the yearly annuity payment was automatically reinvested. Claimant alleges that she relied on the misrepresentations of Respondent when purchasing the annuity. Claimant alleges that she contacted her account executive at Respondent's office who informed her that she could not terminate her investment or receive any monies under the investment. Claimant alleges that she would not have invested in the annuity if she had known of its terms and conditions.

Respondent maintains that Claimant's account executive was Edgar Rivo ("Rivo") and that Rivo has known the Claimant and her family for many years. Respondent maintains that Claimant's mother asked Rivo to discuss a long term savings and insurance plan for her daughter. Respondent maintains that Claimant's mother was concerned about her daughter's spending habits and wanted to preserve some of the funds her daughter would be receiving from her father's death benefit. Respondent maintains that Rivo arranged a meeting with the Claimant and the insurance specialist in the office. Respondent maintains that the investment was fully explained to the Claimant and denies that they made misrepresentations or omitted to state material facts. Respondent maintained that upon receipt of the policy and annuity, Claimant was given 10 days to cancel the contracts which she did not elect to do. Respondent maintains that the contract states, in capital letters, that no cash surrender benefits are provided under the contract.

RELIEF REQUESTED

Claimant requested the return of her investment of \$24,749.20, plus damages representing the normal incremental increase in value which she would have achieved with interest, or at the normal investment rate achieved by Respondent for its clients who maintain funds with the Respondent for investment.

Respondent requested that the Statement of Claim be dismissed in its entirety and that all costs be assessed against the Claimant.

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 originals 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) The Statement of Claim is hereby dismissed in its entirety.
- 2) Each party shall bear their own costs of this action.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

\$100.00	Non-refundable filing fee
\$800.00	Hearing session fees (2 sessions X \$400)

- 1) Total forum fees in the amount of \$900.00 are hereby assessed against the Claimant. Claimant is entitled to offset this amount with the \$500.00 previously paid to the NASD. Accordingly, Claimant is directed to pay the balance of \$400.00 (FOUR HUNDRED DOLLARS AND NO CENTS) to the NASD, Inc.

Concurring Arbitrator's Signature

Name

Industry Arbitrator


Robert W. McElwain, CFA

Date of Decision: March 12, 1993

STATE OF New York ss.:
COUNTY OF Erie

On this 24th day of February 1993, before me personally appeared Robert W. McElwain to me known and known ~~before~~ me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Beverly Ann Reilly

BEVERLY ANN REILLY
Notary Public, State of New York
No. 4876270
Qualified in Erie County
My Commission Expires January 14, 1995

Award 92-01328

Page Three

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) The Statement of Claim is hereby dismissed in its entirety.
- 2) Each party shall bear their own costs of this action.

FORUM FEES

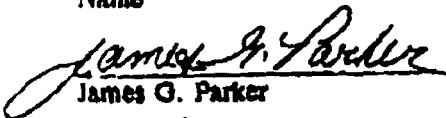
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

\$100.00
\$800.00

Non-refundable filing fee
Hearing session fees (2 sessions X \$400)

- 1) Total forum fees in the amount of \$900.00 are hereby assessed against the Claimant. Claimant is entitled to offset this amount with the \$500.00 previously paid to the NASD. Accordingly, Claimant is directed to pay the balance of \$400.00 (FOUR HUNDRED DOLLARS AND NO CENTS) to the NASD, Inc.

Concurring Arbitrator's Signature
Name


James G. Parker

Public Chairperson

Date of Decision: March 12, 1993

STATE OF New York ss.:

COUNTY OF Wayne

On this 12th day of March, 1993, before me personally appeared James G. Parker to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

 Robin A. Ahearn

ROBIN A. AHEARN
Notary Public, State of New York
Wayne County, #4898283
Commission expires 8/18/94

Award 92-01328

Page Three

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) The Statement of Claim is hereby dismissed in its entirety.
- 2) Each party shall bear their own costs of this action.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

\$100.00	Non-refundable filing fee
\$800.00	Hearing session fees (2 sessions X \$400)

- 1) Total forum fees in the amount of \$900.00 are hereby assessed against the Claimant. Claimant is entitled to offset this amount with the \$500.00 previously paid to the NASD. Accordingly, Claimant is directed to pay the balance of \$400.00 (FOUR HUNDRED DOLLARS AND NO CENTS) to the NASD, Inc.

Concurring Arbitrator's Signature
Name



David P. Polino

Public Arbitrator

Date of Decision: March 12, 1993

STATE OF New York ss.:

COUNTY OF Erie

On this 24 day of February 1993, before me personally appeared David P. Polino to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Kathleen B. Winter

KATHLEEN B. WINTER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires June 14, 1994