

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Wallace and Rena Perkins  
Claimants

vs.

Arbitration # 92-01362

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Respondent

ARBITRATION AWARD

REPRESENTATION

1. Claimants were represented by Mr. Wallace Perkins.
2. Respondent was represented by Mr. Todd A. Zuckerbrod, Attorney at Law.

CASE INFORMATION

3. On April 14, 1992, Wallace Richard Perkins and Rena V. Perkins executed a uniform submission agreement.
4. On April 14, 1992, Richard Perkins submitted a three page statement of claim to the NASD along with his submission agreement.
5. On July 15, 1992, Merrill Lynch, Pierce, Fenner & Smith, Inc. submitted its Statement of Answer to the complaint of Mr. Perkins, by and through its counsel, Mr. Todd A. Zuckerbrod, Attorney at Law.
6. On July 15, 1992, Merrill Lynch, Pierce, Fenner & Smith, Inc. executed a uniform submission agreement.

HEARING INFORMATION

7. The hearing was commenced and completed during one arbitration session on the morning of February 4, 1993.
8. The hearing was held at the NASD office Od 3490 Piedmont Rd., N.E., Suite 500, One Securities Center, Atlanta, GA 30305.

CASE SUMMARY

9. Claimant, after learning some bad news about a stock he held, called his brokers at Merrill Lynch, Pierce, Fenner & Smith, Inc. (hereafter called ML) and Charles Schwab (hereafter called CS) with a directive to sell when the market opened. CS, a market maker, sold the stock in question at 4 1/2. ML, not a market maker for the stock, was not able to achieve the same results as CS and made a series of sales at declining prices to sell Claimants' stock. There were no factual disputes between the parties, but Claimants felt ML should have been as effective as CS; further Claimants felt ML should have told them that CS was a market maker and could probably be a better seller of the stock. There was no evidence that ML knew that Claimants had the same stock with CS and no evidence was presented of any requirement on a broker to provide such advice.

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10. Claimants wanted to be paid \$4.50 for each share.

11. Claimants allege ML did not act promptly and acted with poor judgment. Further Claimants feel ML should have notified them of the declining prices before selling at less than 4 1/2. Finally Claimants allege the contacts by ML's attorney before the hearing were unpleasant.

12. Respondent presented evidence about the difference between the competitive edge of a market maker and a non-market maker and detailed the steps, time frames and declining prices involved with disposition of Claimants' stock.

13. Respondent also alleged defenses of: failure to state a claim, estoppel by Claimant's conduct, estoppel by ratification and acquiescence, and failure to mitigate damages.

#### RELIEF REQUESTED

14. Claimants requested to be put whole and stated the actions of ML cost them \$10,141.00 plus interest that could have been earned in a Money Market account.

15. Respondent requested dismissal of the claim.

#### AWARD

16. After considering the pleadings, the testimony and the evidence and arguments of the parties and counsel presented during the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

There is no evidence of delayed performance nor of poor judgment by ML. The losses to Claimants, though regrettable and painful, were directly related to the volatility of the market and real decline in the value of the stock in less than an hour.

The claim is hereby denied.

#### FORUM FEES

17. Forum fees paid by Claimants shall be retained.

This February 4, 1993.

*Chandler Bridges*  
Chandler Bridges  
Sole Arbitrator

Date of Decision: February 8, 1993