

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Huntington Group, P.C. Savings Pl. et al

92-01533

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Robert Appel
David Stulberg

REPRESENTATION

For Claimants, Huntington Group, P.C. Savings Plan et. al: Jonathan B. Frank,
Esq. of Mason, Steinhardt, Jacobs & Perlman.

For Respondents, Merrill Lynch, Robert Appel and David Stulberg: Clarence L.
Pozza, Jr., Esq. of Miller, Canfield, Paddock & Stone.

CASE INFORMATION

Claimant's Submission Agreements signed on:

Martin Moss - May 1, 1992.

Donald Shapiro - May 1, 1992.

W. J. Gallo - May 1, 1992.

John Gaul - May 1, 1992.

Michael Heath - May 1, 1992.

The Huntington Group, P.C., by Martin Moss, President - May 1, 1992.

The Huntington Group, P.C. Savings Plan, by Donald Shapiro, Trustee
on May 13, 1992.

Statement of Claim filed on: May 4, 1992.

Respondent, Merrill Lynch Pierce Fenner & Smith ("Merrill")'s Submission
Agreement signed on: June 20, 1992.

Respondent, David Stulberg's Submission Agreement signed on: June 23, 1992.

Respondent, Robert Appel's Submission Agreement signed on: July 20, 1992.

Award 92-01533

Page Two

Respondents' Joint Statement of Answer and Counterclaim filed on: July 8, 1992.

Claimants' Response to Counterclaim filed: July 20, 1992.

HEARING INFORMATION

Pre-hearing conference - October 1, 1993.

Hearing Dates/Sessions - November 9, 1993 - Two Sessions.
November 10, 1993 - Two Sessions.

Hearing Location - American Arbitration Association - Southfield, MI.

CASE SUMMARY

Claimants allege that Claimant, Donald Shapiro ("Shapiro") met Respondent, David Stulberg ("Stulberg") and that Stulberg began acting as Shapiro's financial and investment advisor to assist Shapiro investing in funds in his profit sharing plan ("the Plan"). Claimants allege that Shapiro told Stulberg he desired safe protection of principal, low risk and some return on principal. Claimants allege that sometime thereafter, the day-to-day responsibilities for providing investment advice to the Plan was taken over by Respondent, Robert Appel ("Appel").

Claimants allege that despite Shapiro's instructions, Appel recommended that the Plan invest in highly speculative and risky bonds in several savings and loan institutions and a department store. Claimants allege that Appel purposely omitted several material facts regarding the risks of the transactions, and misrepresented to Shapiro that the securities purchased were low risk and appropriate for the Plan. Claimants allege that Shapiro, who was unfamiliar with the stock and financial markets, relied upon Appel's advice. Claimants allege that Stulberg did not properly review the account nor did he properly supervise Appel's activities with regard to the Plan's account.

Respondents maintain that they acted professionally, competently and lawfully at all times with respect to the Huntington Group, P.C. Savings Plan's account ("Huntington account"). Respondents assert that the Huntington account was controlled by the Trustees and that the Respondents accepted orders for transactions primarily from Claimant, Donald Shapiro who was a Trustee. Respondents maintain that the Trustees have the fiduciary duty to the account, not the Respondents.

Respondents maintain that the Huntington account was conservative, diversified, performed very well and contained a small number of high yielding fixed income investments. Respondents maintain that each of the investments, about which Claimants now complain were purchased by them after a complete discussion of the risks and rewards. Respondents maintain that each investment was suitable and that the Trustees were presented with ideas, suggestions and recommendations for lower, medium and higher quality investments and that the Trustees made their own decisions about which investments to purchase and which to pass. Respondents maintain that the Trustees did not want an account which was oriented toward eliminating all risk.

Respondents allege in their Counterclaim that Trustees, Claimants Donald Shapiro, Martin Moss, W.J. Gallo, John Gaul and Michael Heath had non delegable duties and fiduciary duties to the Plan. Respondents allege that the Trustees made certain representations to them, including that the Trustees made the investment decisions, that the purchase of various investments of less than investment grade were appropriate, that they understood the risks and were willing to undertake such risks to obtain a higher yield.

Claimants maintain that they relied on the expertise of the Respondents and that the Respondents made recommendations about purchases and sales. Claimants maintain that the Respondents failed to take the Plan's best interests into account in making those recommendations. Claimants maintain that the Respondents owed the Plan a fiduciary duty which the Respondents did not fulfill.

RELIEF REQUESTED

Claimants requested damages in excess of \$200,000.00, plus interest, costs, attorney's fees and punitive damages.

Respondents requested that the Claim be dismissed in its entirety and that Respondents be awarded their costs and attorney's fees. Respondents, in their Counterclaim requested that an award be entered against Claimants Donald Shapiro, Martin Moss, W.J. Gallo, John Gaul and Michael Heath for all costs and expenses incurred by the Respondents and for the amount of any recovery by the Claimants or the Plan against the Respondents.

Claimants requested that the Counterclaim be dismissed in its entirety and that the costs of defending this Counterclaim be assessed against the Respondents.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolutions of the issues submitted for determination as follows:

- 1) The Claim is hereby dismissed in its entirety.
- 2) The Counterclaim is hereby dismissed in its entirety.
- 3) Each party shall bear their respective costs of this action, including attorney's fees.

FORUM FEES

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

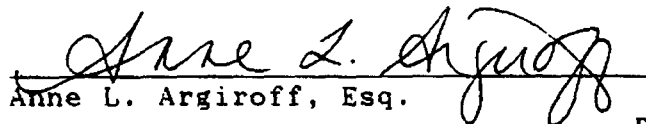
\$200.00	Non-refundable filing fee for Claim
\$500.00	Non-refundable filing fee for Counterclaim
\$300.00	Pre-hearing Conference fee
\$3,000.00	Hearing Session fees (4 sessions x \$750.00)

- 1) Total forum fees in the amount of \$4,000.00 are hereby assessed equally between Claimants and Respondents.
- 2) Accordingly, Claimants are jointly and severally assessed the amount of \$2,000.00. Claimants shall be entitled to offset this amount with the \$950.00 previously paid to the NASD, Inc. Claimants are directed to pay the balance of \$1,050.00 to the NASD, Inc.
- 3) Respondents are jointly and severally assessed the amount of \$2,000.00. Respondents shall be entitled to offset this amount with the \$1,250.00 previously paid to the NASD, Inc. Respondents are directed to pay the balance of \$750.00 to the NASD, Inc.

DISSENTING DECISION

The investments in question were not suitable for the pension plan. The lack of suitability was the direct cause of the loss. Any acquiescence of the plan's trustee is not relevant to the issues of suitability or loss. Respondent's duty was to the plan itself.

Dissenting Arbitrator's Signature
Public Chairperson


Anne L. Argiroff, Esq.

Date of Decision: January 10, 1994

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolutions of the issues submitted for determination as follows:

- 1) The Claim is hereby dismissed in its entirety.
- 2) The Counterclaim is hereby dismissed in its entirety.
- 3) Each party shall bear their respective costs of this action, including attorney's fees.

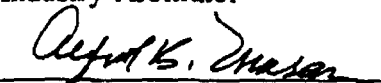
FORUM FEES

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

\$200.00	Non-refundable filing fee for Claim
\$500.00	Non-refundable filing fee for Counterclaim
\$300.00	Pre-hearing Conference fee
\$3,000.00	Hearing Session fees (4 sessions x \$750.00)

- 1) Total forum fees in the amount of \$4,000.00 are hereby assessed equally between Claimants and Respondents.
- 2) Accordingly, Claimants are jointly and severally assessed the amount of \$2,000.00. Claimants shall be entitled to offset this amount with the \$950.00 previously paid to the NASD, Inc. Claimants are directed to pay the balance of \$1,050.00 to the NASD, Inc.
- 3) Respondents are jointly and severally assessed the amount of \$2,000.00. Respondents shall be entitled to offset this amount with the \$1,250.00 previously paid to the NASD, Inc. Respondents are directed to pay the balance of \$750.00 to the NASD, Inc.

Concurring Arbitrator's Signature
Industry Arbitrator


Alfred B. Moran

Date of Decision: January 10, 1994

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolutions of the issues submitted for determination as follows:

- 1) The Claim is hereby dismissed in its entirety.
- 2) The Counterclaim is hereby dismissed in its entirety.
- 3) Each party shall bear their respective costs of this action, including attorney's fees.

FORUM FEES

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

\$200.00	Non-refundable filing fee for Claim
\$500.00	Non-refundable filing fee for Counterclaim
\$300.00	Pre-hearing Conference fee
\$3,000.00	Hearing Session fees (4 sessions x \$750.00)

- 1) Total forum fees in the amount of \$4,000.00 are hereby assessed equally between Claimants and Respondents.
- 2) Accordingly, Claimants are jointly and severally assessed the amount of \$2,000.00. Claimants shall be entitled to offset this amount with the \$950.00 previously paid to the NASD, Inc. Claimants are directed to pay the balance of \$1,050.00 to the NASD, Inc.
- 3) Respondents are jointly and severally assessed the amount of \$2,000.00. Respondents shall be entitled to offset this amount with the \$1,250.00 previously paid to the NASD, Inc. Respondents are directed to pay the balance of \$750.00 to the NASD, Inc.

Concurring Arbitrator's Signature
Public Arbitrator


Michael J. Meeusen

Date of Decision: January 10, 1994