

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

R. E. Lenthe, Lenthe IRA,  
Lenthe Investment, Inc.

92-01564

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

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REPRESENTATION

For Claimant at the hearing: Bruce Pearson, Fargo, North Dakota.

For Respondents at the hearing: Francis C. Musselman, Esq. of  
Merrill Lynch Pierce Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: May 7, 1992.

Claimant R.E. Lenthe's Submission Agreement signed on: January 27, 1992. Claimant Lenthe Investment, Inc.'s Submission Agreement signed on: June 8, 1992 by R. E. Lenthe as President. Lenthe IRA's Submission Agreement signed on: June 8, 1992 by R. E. Lenthe as Principal.

Statement of Answer filed by Respondent Merrill Lynch on: August 11, 1992.

Respondent's Submission Agreement signed on: August 10, 1992 by Francis C. Musselman.

HEARING INFORMATION

Hearing Date/Sessions: December 15, 1992 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimants R. E. Lenthe, Lenthe IRA, and Lenthe Investment, Inc. (collectively, "Lenthe") alleged that he purchased Illinois Housing Development Authority Multi-family bonds, Illinois Housing Development Authority Cap. Appreciation bonds, and Inter Mountain Power Agency Utah Power Supply bonds from Respondent Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"), and

the bonds were marked up excessively and unsuitable for him. Lenthe alleged that Merrill Lynch engaged in misrepresentation because Lenthe was not apprised to the callable feature of the bonds and was not apprised of the premium that he was paying over the accreted value. Lenthe also alleged that he was told by Merrill Lynch that his portfolio would yield ten percent (10%).

Merrill Lynch generally denied the allegations as set forth in the statement of claim, including but not limited to the allegations of excessive mark-up, misrepresentation, and suitability. Merrill Lynch alleged that Lenthe was apprised of the callable feature of the bonds before purchasing them.

Merrill Lynch asserted the following affirmative defenses: failure to state a claim upon which relief can be granted, estoppel, ratification, approval, acquiesced, recklessness, negligence, failure to mitigate damages, statute of limitations, and laches.

#### RELIEF REQUESTED

Claimants requested \$90,250.00 for accrued interest, \$33,000.00 for appreciated value, \$7000.00 for representation and filing fees, \$50,000.00 for punitive damages, for a total award of \$180,000.00.

Respondent requested that the Statement of Claim be dismissed in its entirety, costs, and any further relief as the panel deems just and proper.

#### OTHER ISSUES CONSIDERED & DECIDED

The parties present at the hearing 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.

At the hearing, at the conclusion of Claimant's case, the Respondent moved to dismiss the claim. The arbitration panel denied the motion and the Respondent presented its case.

#### AWARD

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

1. The claimant's Statement of claim is denied and dismissed in its entirety;

2. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated for, as set forth below.

**FORUM FEES**

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

2 sessions X \$500 = \$1000 minus hearing session deposit of \$500 = net \$500 due.

The NASD shall retain the non-refundable filing fee in the amount of \$150 and shall retain the \$500 hearing session deposit previously deposited by the Claimant. Additional Forum fees Assessed Against: Respondent Merrill Lynch in the amount of \$500.

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

By The Arbitration Panel:

Dated:

December 29, 1992

Arthur Sirkin, Esq.  
Arthur Sirkin, Esq.  
Chairperson  
Public Arbitrator

December 24, 1992

Angela R. Banga, Esq.  
Angela R. Banga, Esq.  
Public Arbitrator

December 24, 1992

Harold H. Tearse, III  
Harold H. Tearse, III  
Industry Arbitrator

Date Award Served By The NASD: January 4, 1993