

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Cowles, Sabol & Company, Inc.

NASD Arbitration
No. 92-01670

v.

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Robert Sheeran
Molly C. Wilson

v.

William L. Sabol

REPRESENTATION

For Claimant and Counter-Respondent: Carl J. Carlson, Esq., Talmadge and Cutler, Seattle, Washington

For Respondents and Third-Party Claimants and Counter-Claimants Merrill Lynch and Robert Sheeran: Michael R. Scott, Esq., Hillis Clark Martin & Peterson, Seattle, Washington

For Respondent Molly Wilson: Molly Wilson, Seattle, Washington

For Third-Party Respondent William Sabol: Carl J. Carlson, Esq., Talmadge and Cutler, Seattle, Washington

CASE INFORMATION

Statement of Claim filed: May 15, 1992

Claimant's Submission Agreement signed: August 14, 1992

Amendment to Statement of Claim filed: June 3, 1992

Joint Answer and Third-Party Claim filed by Respondents Merrill Lynch and Robert Sheeran:
July 31, 1992:

Amended Joint Answer and Third-Party Claim and Counter-Claim filed by Respondents Merrill
Lynch and Robert Sheeran: December 9, 1992

Respondents Merrill Lynch and Robert Sheeran's Submission Agreement signed: August 7, 1992

Respondent Molly Wilson did not file an Answer or a Submission Agreement.

Reply to Amended Answer and Third-Party Claim and Counter-Claim filed: December 24, 1992

Third-Party Respondent William Sabol did not file a Submission Agreement.

HEARING INFORMATION

Pre-hearing date / sessions: November 16, 1993 - one session

Motion hearing date / sessions: March 4, 1994 - one session

Hearing via telephone date / sessions: April 27, 1994 - one session

The pre-hearing conference and motion hearing were held in Seattle, Washington.

CASE SUMMARY

Cowles, Sabol alleged claims for misrepresentation, fraud, conspiracy, negligence, unfair business practices, and contribution against Merrill Lynch, Robert Sheeran and Merrill Lynch's former employee, Molly Wilson. These claims arose from customer complaints made by Cowles, Sabol's clients for churning, unsuitable trading, theft of funds, and failure to supervise Molly Wilson. Cowles, Sabol also alleged that Merrill Lynch and Robert Sheeran failed to disclose improper trading and other activities by Molly Wilson during her tenure at Merrill Lynch, and also failed to disclose customer complaints against or investigations of Molly Wilson.

Respondents Merrill Lynch and Robert Sheeran denied the allegations of wrongdoing, denied liability to Cowles, Sabol, and filed a third-party claim against William Sabol and a counter-claim against Cowles, Sabol alleging failure to supervise Molly Wilson.

Cowles, Sabol and William Sabol denied the allegations of the third-party claim and counter-claim.

RELIEF REQUESTED

Cowles, Sabol requested damages of approximately \$500,000 as recompense for the amounts paid to its customers in settlement of the customers' claims against Cowles, Sabol, plus costs of arbitration and attorney's fees.

Respondents Merrill Lynch and Sheeran requested dismissal of the claim, and an award of attorney's fees and costs of arbitration.

OTHER ISSUES CONSIDERED AND DECIDED

At the motion hearing on March 4, 1994, Respondents Merrill Lynch and Robert Sheeran moved for dismissal of all claims for failure to state a claim for which relief could be granted. Cowles, Sabol opposed the motion to dismiss and moved to have the case removed from NASD jurisdiction and referred to a court of competent jurisdiction pursuant to Section 16 of the Code of Arbitration Procedure. Cowles, Sabol and William Sabol also requested attorneys' fees and costs in connection with the motion hearing. The panel denied all motions.

Subsequently, Respondents Merrill Lynch and Robert Sheeran settled out of the case and withdrew their counter-claim and third-party claim. On April 27, 1994, a telephone hearing was convened to hear Cowles, Sabol's motion to bar defenses of Respondent Molly Wilson and to present the evidence in its claim against her. Claimant amended its request for damages to the amount claimed less amounts recovered from other Respondents and indemnity bonds.

The arbitrators determined that jurisdiction over Respondent Molly Wilson existed based on her U-4 applications for registration filed with the NASD, the proof of service for the claims against her, and the proof of service on her of all notices of date, time and location of hearings. The panel granted Claimants' motion to bar defenses.

Cowles, Sabol, as the only party appearing before the panel of arbitrators at the April 27, 1994, evidentiary hearing, agreed that the Award in this case may be executed in counterpart copies or that a handwritten, signed Award may be entered, and 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 letter received on May 3, 1994, opposing Claimant's motion to bar was not timely filed, and the panel stands by the decision to bar her defenses.

2. Respondent Molly Wilson is liable for and shall pay to Claimant Cowles, Sabol & Company, Inc., the sum of \$255,467 plus interest at 8% per annum from the date of the award until paid. This award is based on the panel's finding that Molly Wilson engaged in thefts and securities fraud.
3. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the NASD shall retain the \$500 non-refundable filing fee paid by Cowles, Sabol as well as the \$500 non-refundable filing fee paid by Counter-Claimant Merrill Lynch. The \$450 hearing session deposit paid by Merrill Lynch shall be refunded by the NASD.,

All forum fees are assessed against Claimant:

Total fees:

1 pre-hearing session @ \$300 / session	\$ 300
2 hearing session @ \$750 / session	<u>\$1500</u>
	\$1800
Credit for deposit received	<u>\$ 750</u>
Balance Due	<u>\$1050</u>

Fees are payable to the NASD, Inc.

ARBITRATORS

Name

Blake Weston

Donald C. Douglas

William F. Ross

Public / Industry

Industry Arbitrator

Industry Arbitrator

Industry Arbitrator

Concurring Arbitrators' Signatures

Blake Weston

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Donald C. Douglas

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Date of Decision: _____

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	\$1200
Credit for deposit received	<u>\$ 750</u>
Balance Due	<u>\$1050</u>

Fees are payable to the NASD, Inc.

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<u>Name</u>	<u>Public / Industry</u>
Blake Weston	Industry Arbitrator
Donald C. Douglas	Industry Arbitrator
William F. Ross	Industry Arbitrator

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