

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Rosemary L. Price

92-01877

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Bruno Mario Di Giorgi

REPRESENTATION

For Claimant Rosemary L. Price ("Claimant"): Charles E. Dunlap, Esq., a sole practitioner.

For Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS") and Bruno Mario Di Giorgi ("Di Giorgi"): V. James Mann, Esq., of MLPFS.

CASE INFORMATION

Statement of Claim filed: June 4, 1992.

Claimant's Submission Agreement signed on: June 15, 1992.

Joint Statement of Answer filed by Respondents on: July 27, 1992.

Respondent MLPFS's Submission Agreement signed on: July 23, 1992.

Respondent Di Giorgi's Submission Agreement signed on: July 15, 1992.

HEARING INFORMATION

Hearing Date/Sessions:

July 1, 1993/2 sessions

Hearing Location:

NASD/Cleveland, OH.

CASE SUMMARY

Claimant alleged she was employed by General Foods for approximately 27 3/4 years and prior to her retirement, the company made an ESOP distribution. Claimant alleged Talva Burns ("Burns"), an employee of MLPFS addressed the employees of General Foods regarding the ESOP and an IRA. Claimant alleged that in September 1989, she took an early buy-out from

General Foods and she then contacted Burns to assist her in rolling over her company fund with General Foods to an IRA. Claimant alleged she was referred to Di Giorgi when informed Burns was not with MLPFS. Claimant alleged she opened her account in November 1989, with Di Giorgi, and in March 1990 she gave him the Phillip Morris stock certificate as she owned 11,733 shares of stock. Claimant alleged the stock was split into an IRA Rollover Account ("IRA Account") and Cash Management Account ("CMA"). She further alleged she did not know Burns still was employed at MLPFS.

Claimant alleged she and her husband decided they would keep their Phillip Morris Common Stock ("Phillip Morris") for at least two years. Claimant alleged that in April 1990 she returned a call to Di Giorgi wherein he suggested she sell the Phillip Morris and buy First Chicago Corp. Bonds ("First Chicago"). She further alleged Di Giorgi used scare tactics to make the sale. Claimant alleged she and her husband researched the sale and First Chicago and decided Di Giorgi sold them a speculative bond and did not diversify their account. Claimant alleged she and her husband contacted MLPFS to stop the sale but their request was denied. Claimant then alleged she gave Di Giorgi a direct order to execute trades so that her account would be adjusted back to its original position; however, Di Giorgi refused.

Claimant alleged Di Giorgi persuaded her to make the sale for his and MLPFS' economic gain and it was not in her best interest. Claimant also alleged the sale could have been stopped prior to closing; that Di Giorgi used scare tactics and lies to cause the sale; that he wilfully refused to obey her order; and that he did not diversify her account which he had stated was one of the reasons for the sale of the Phillip Morris.

Respondents alleged Claimant established two accounts at MLPFS in March 1990, each serviced by Di Giorgi. Respondents maintained one was a CMA and the other an IRA account. Di Giorgi asserted he spoke with Phillip Morris' Benefits Department and Claimant's CPA and was advised that 11,034 shares should be rolled over into the IRA account; the rest went into the CMA account. Di Giorgi contended he and Claimant's accountant agreed that in light of Claimant's age, relative lack of sophistication, recent retirement and the amount of retirement assets, she would be best served by eliminating the risks of the equities market. Di Giorgi asserted he explained the considerations discussed above with Claimant and recommended she sell her Phillip Morris shares and invest the proceeds in non-callable, investment grade bonds issued by First Chicago. Di Giorgi asserted that after the order was executed, he explained it to Claimant's husband who then suggested the remaining proceeds from the sale of Phillip Morris be used to purchase an additional 39,000 face amount of the bonds. Di Giorgi maintained the additional bonds were purchased on Claimant's instruction.

Respondents contended Claimant and her husband asked MLPFS to cancel the trade on settlement date because they had learned that MLPFS had a favorable fundamental opinion on

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Phillip Morris and that Di Giorgi should not have suggested selling the stock in light of that opinion. MLPFS maintained it declined to cancel the trades because it believed that Di Giorgi's advice was reasonable and consistent with Claimant's needs and means. Finally, Respondents contended that when Claimant's account was reassigned to a different financial consultant Claimant kept the bonds until August 1990.

RELIEF REQUESTED

Claimant requested: 11,034 shares of Phillip Morris and attorneys' fees; or, in the alternative, actual damages in the amount of \$400,000.00; attorneys' fees and costs.

Respondents requested: the Statement of Claim be dismissed; and costs.

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. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is hereby liable and shall pay to Claimant Rosemary L. Price the sum of \$7,000.00;
2. Claimant Rosemary L. Price's claims against Respondent Bruno Mario Di Giorgi are dismissed;
3. All other claims are dismissed;
4. Each party shall bear its own expenses, including attorneys' fees; however, Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is hereby liable and shall reimburse to Claimant the \$750.00 hearing session deposit paid previously to the NASD.

OTHER COSTS

1. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is hereby liable and shall pay to the NASD the sum of \$750.00. Said amount is due, pursuant to

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Section 30 of the Code of Arbitration Procedure ("Code") for the adjournment which was granted to Merrill Lynch Pierce Fenner & Smith, Inc.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$200.00 non-refundable filing fee previously paid by Claimant and the following Forum Fees are assessed.

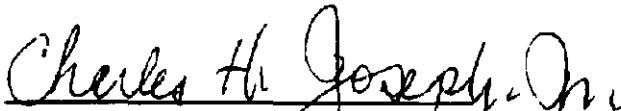
2 sessions X \$750.00 = \$1,500.00 minus hearing session deposit of \$750.00 = net \$750.00 due.

Forum fees Assessed Against:

1. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is hereby liable and shall pay to the NASD the sum of \$750.00.

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

Arbitrator Signature


Charles H. Joseph, Jr./Industry Arbitrator

Date of Decision: August 11, 1993

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Joseph W. Grossner/Public Arbitrator

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Arbitrator Signature


Jeffrey M. Bain, Public Arbitrator

Date of Decision: August 1, 1993