

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ralph and Tammie Vermillo

Case No. 92-01914

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc  
Norman D. Schuermann

REPRESENTATION

For Claimants, Ralph and Tammie Vermillo ("the Vermillo's"): Andrew Balog, Esq. of Merkle and Magri, P.A.

For Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"): Jeffrey S. Grubman, Esq. of Morgan, Lewis & Bockius.

Respondent, Norman D. Schuermann ("Schuermann"): Pro Se.

CASE INFORMATION

Statement of Claim filed: June 8, 1992. Claimants' Submission Agreement signed: May 28, 1992.

Respondent, Merrill Lynch's, Statement of Answer filed: July 30, 1992. Respondent, Merrill Lynch's, Submission Agreement signed: August 20, 1992 by Arthur M. Borham on behalf of the firm.

Respondent, Schuermann, filed his Answer on September 15, 1992. Respondent, Schuermann's, Submission Agreement signed: September 1, 1992.

HEARING INFORMATION

On December 14, 1992 and January 26, 1993, pre-hearing conferences lasting two (2) sessions were conducted via telephone with an arbitrator.

On February 8 and 9 and on April 15, 1993, in Tampa, Florida, hearings lasting seven (7) sessions were conducted.

### CASE SUMMARY

Claimants alleged that Respondent, Schuermann, misrepresented to them that their investment in "Harbor Point Office Park, Ltd. I." ("Harbor Pointe") was an investment product of Respondent, Merrill Lynch, when it was not. Claimants further alleged that the investment was unsuitable for Claimants in light of their investment objectives. Claimants contended that Respondent, Merrill Lynch, is liable for the actions of Schuermann, because he was one of their account representatives at the time he sold the investment at issue to Claimants and that the transaction took place on, Merrill Lynch's, premises under Merrill Lynch's apparent authorization. Claimants further stated that, Schuermann induced them to enter into a promissory obligation with Figgie Acceptance Corporation, a finance company, in order to finance the purchase of Harbor Pointe and that shortly thereafter Harbor Pointe went into default and Claimants lost their entire investment including all interest paid to Figgie Corporation.

Respondent, Merrill Lynch, denied all allegations of wrongdoing and maintained that Claimants did not purchase Harbor Pointe through their Merrill Lynch account, that Merrill Lynch did not know and had no way of knowing that Schuermann had sold Harbor Pointe to the Vermilios and that Schuermann specifically told Claimants that it was not a Merrill Lynch investment and that they were not purchasing it through their Merrill Lynch account and that he could get into trouble if Merrill Lynch knew he was selling Harbor Pointe to them. Respondent, Merrill Lynch contended that Claimants do not have a claim against Merrill Lynch and that Merrill Lynch is not liable for any losses Claimants may have suffered from their investment in Harbor Pointe.

Respondent, Schuermann, alleged that Claimant, Ralph Vermilio was a sophisticated investor with a substantial income and that the Harbor Point investment was never represented as a Merrill Lynch product and that Claimants were shown other Merrill Lynch product which warranted the tax write offs Claimants desired but that none were acceptable for the large write off Claimants wanted. Schuermann stated that he told Claimants that he had a friend who was doing a private placement in Colorado (Harbor Pointe) that had the write offs they desired and that Claimants expressed an interest in it. Schuermann maintained that although he was a broker at Merrill Lynch when he sold Harbor Pointe to Claimants no where in the document does Merrill Lynch appear and that Claimants were told several times that Harbor Pointe was not a Merrill Lynch product and that he could be in trouble for showing it to them and that Claimants went ahead with the purchase fully knowing the foregoing.

### RELIEF REQUESTED

Claimants requested return of their investment, including principle and interest, exceeding \$60,000.00, finance charges, attorney's fees, costs and punitive damages.

Respondent, Merrill Lynch requested dismissal of the Statement of Claim against it in its entirety and that Merrill Lynch be awarded its attorneys' fees and costs against Claimants.

Respondent, Schuermann requested dismissal of the Statement of Claim.

### **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, and the post-hearing submissions of the parties the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Merrill Lynch and Schuermann, are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimants' request for attorneys' fees and costs are hereby denied.
3. Claimants' request for punitive damages are hereby denied.
4. Respondents request for attorneys' fees, costs, and expenses are denied.
5. All other claims are hereby denied.
6. Respondent, Schuermann, is hereby reprimanded for selling Harbor Pointe Office Park Ltd. I away from the firm and contrary to Merrill Lynch's directions.

### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$5,850.00 (two (2) pre-hearing conferences X\$300.00 plus seven (7) hearing sessions X \$750.00)

1. Claimants are hereby assessed forum fees in the amount of \$1,950.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD, by Claimant, of \$1,200.00.
2. Respondent, Merrill Lynch, is hereby assessed forum fees in the amount of \$1,950.00 payable to the NASD, Inc.

3. Respondent, Schuermann, is hereby assessed forum fees in the amount of \$1,950.00 payable to the NASD, Inc.

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

Concurring Arbitrators' Signatures

/s/  
John P. Cullem, Esq.

Public

/s/  
Joseph I. Amonette

Industry

/s/  
Robert J. Morris

Public

Date of Decision: June 25, 1993