

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

John R. and Joyce Wheeler, JTWROS :

Claimants :

vs. :

Merrill Lynch, Pierce, Fenner & Smith, Inc. :

Respondent :

CASE #92-01999
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 16, 1992, Claimants John R. and Joyce Wheeler, who appeared Pro Se, alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. failed to follow their instructions to reinvest a 100,000 Australian Dollar note to be made in Australian Dollars, so that the proceeds would exactly fund the new purchase. The Claimants contended that since the reinvestment was done in American dollars, they have suffered a loss, which the Respondent has failed to correct, but should be held liable for.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its in-house counsel, Christopher Cavuoti, Esq., maintained that the Claimant did not request to have the trade done in Australian Dollars, and that at the maturity of a foreign currency note, the proceeds are automatically converted into U.S. Dollars, making the Claimant's alleged request impossible. The Respondent further maintained that the Claimant authorized the transaction and was given the material information on which to make his decision. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. contended that a change in currency exchange rates "after" the trade date is what prompted this claim.

RELIEF REQUESTED

Claimants John R. & Joyce Wheeler requested \$7,525.00 in actual damages, plus interest and attorney's fees.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Evelyn Ann Kramer, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on April 10, 1992 and by the Respondent on July 27, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall pay to Claimants John R. & Joyce Wheeler \$3,262.82 in actual damages, plus simple interest in the amount of \$978.84.
2. The parties shall bear their respective costs and attorney's fees.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to Claimants John R. & Joyce Wheeler \$75.00 representing reimbursement for one-half of the fee.

AFFIRMATION

I, EVELYN ANN KRAMER, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: November 17, 1992