

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Richard S. Abrams, MD. Pensions Trust

No. 92-02397

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Guy Goodwin

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**REPRESENTATION OF PARTIES**

Richard S. Abrams, MD appeared on behalf of the Claimant.

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

**CASE INFORMATION**

Statement of Claim filed: August 12, 1992.

Claimant's Submission Agreement signed on: August 6, 1992.

Joint Statement of Answer filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc.  
and Guy Goodwin on: October 1, 1992.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed on:  
September 29, 1992.

Respondent Guy Goodwin's Submission Agreement signed on: September 29, 1992.

**HEARING INFORMATION**

Hearing date: March 25, 1993. Two (2) sessions.

Hearing Location: Chicago, Illinois.

### CASE SUMMARY

Claimant, Richard S. Abrams, MD. Pensions Trust ("Claimant") alleged that the dispute arose out of the mismanagement of the pension's funds. Claimant also alleged that he did not give "blanket permission" to Respondent Guy Goodwin ("Goodwin"), an account executive of Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. ("ML"), to buy and sell as Goodwin chose. Claimant asserted that he relied heavily on the advice of Goodwin from 1987 until October of 1990. Claimant stated that he spoke with Goodwin every week or two, and Goodwin had allegedly assured Claimant that all was "ok" even though most of the purchases lost money. Claimant also asserted that most of the purchases were too risky, and inappropriate for his pension goals, that Goodwin had made misrepresentations to Claimant concerning the investments, and that neither ML nor Goodwin had advised him that BRT had been in trouble or that the stock should have been sold. Other investments involved in the claim were discussed more fully during the course of the hearing. (See also the attachment to the Statement of Claim.) Lastly, Claimant stated that he had bought into a "name-brand" brokerage house fully expecting a reasonable and prudent approach to the investing selection, and that ML and Goodwin failed to provide such an approach.

In their Answer, ML and Goodwin generally and specifically denied the allegations made in the Statement of Claim. In addition, ML and Goodwin asserted the following affirmative defenses:

1. The Statement of Claim failed to allege claims upon which relief may be granted.
2. Claimant is estopped from asserting the claims set forth in the Statement of Claim due to his own acts and conduct.
3. Claimant, with full knowledge of the facts, ratified, approved, accepted, acquiesced and confirmed in all respects the acts complained of in the Statement of Claim.
4. Claimant failed to exercise due diligence and was reckless in the supervision of his financial affairs and in particular the operation of his Merrill Lynch account.
5. Claimant was negligent in the supervision of his financial affairs and in particular the operation of his ML account.
6. Claimant suffered no damages by the acts complained of in the Statement of Claim.
7. Claimant failed to mitigate his alleged damages if any.
8. The claims asserted in the Statement of Claim are time-barred by the applicable statutes of limitations and/or the equitable doctrine of laches.

**RELIEF REQUESTED**

Claimant requested an award of \$87,089.00 in actual damages, and also requested an award of punitive damages.

Respondents ML and Goodwin requested that the Statement of Claim be dismissed in its entirety, that the cost of the proceeding be assessed against the Claimant and that the panel award ML and Goodwin such other and further relief as is deemed just and proper.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed by 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. Claimant, Richard S. Abrams, MD. Pensions Trust's claims for damages, and punitive damages are hereby denied and dismissed with prejudice.

**FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

2 hearing sessions X \$500.00 = \$1,000.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$150.00, and shall retain the hearing session deposit in the amount of \$500.00 previously paid to the NASD by the Claimant.

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Additional forum fees in the amount of \$500.00 are assessed against the Claimant.

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

**CONCURRING ARBITRATORS**

Dated:

March 25, 1993

/s/John J. Enright  
John J. Enright  
Presiding Chair  
Public Arbitrator

March 25, 1993

/s/Michael S. Matek  
Michael S. Matek  
Public Arbitrator

March 25, 1993

/s/Gery Sadzewicz  
Gery Sadzewicz  
Industry Arbitrator

Date of Service by the NASD: March 29, 1993