

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John Winters

Case No. 92-02620

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc

REPRESENTATION

For Claimant, John Winters ("Winters"): Hugh Stevens, Esq. of Everett Gaskins Hancock & Stevens.

For Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"): Paul W. Stivers, Esq. of Rogers & Hardin.

CASE INFORMATION

Statement of Claim filed: August 3, 1992. Claimant's Submission Agreement signed: July 30, 1992.

Respondent's Statement of Answer filed: October 9, 1992. Respondent's Submission Agreement signed: October 8, 1992 by Dennis M. Pape on behalf of Merrill Lynch.

HEARING INFORMATION

On June 8 and 9, 1993, in Raleigh, North Carolina, hearings lasting four (4) sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondent invested his funds in highly speculative stocks that were inappropriate in light of Winter's conservative investment goals and in contravention of his directions. Winters also alleged that Merrill Lynch made inappropriate use of margin transactions and that Merrill Lynch knew or should have known that Winters did not understand margin accounts.

Respondent denied all allegations of wrongdoing and alleged that all transactions recommended to Winters were suitable based upon Winter's financial condition and investment objectives. Respondent also alleged that at all times, Winters was aware that he had a margin account, what the risks were, what his margin balance was, and, that he was being charged margin interest.

RELIEF REQUESTED

Claimant requested \$225,000.00 in aggregate net capital losses and \$24,000.00 in aggregate net margin interest and fees.

Respondent requested that the Statement of Claim be dismissed in full and that costs be assessed against Winters.

OTHER ISSUES CONSIDERED & DECIDED

1. At the hearing, the tape recording equipment having malfunctioned, the parties stipulated that they would proceed without the need to further record the proceeding.
2. 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is found not liable and, therefore, all claims against it are hereby dismissed.
2. Respondent's request for costs is denied.

OTHER COSTS

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

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,000.00 (four sessions x \$750.00 per session).
2. Claimant is hereby assessed \$1,500.00 for which the NASD shall retain the \$750.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$750.00 payable to the National Association of Securities Dealers, Inc.
3. Respondent is hereby assessed \$1,500.00 payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

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

ARBITRATION PANE

Concurring Arbitrators' Signatures

/s/
David Brooks Adcock, Esq.

Public/Chairman

/s/
Wayne Parker

Public/Panelist

/s/
Thomas C. Looney

Industry/Panelist

Date of Decision: July 28, 1993