

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Clarence and Harriet Salzberg

vs.

92-03091

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
Sidney Kogan

REPRESENTATION

For Claimants, Clarence and Harriet Salzberg; Anthony V. Trogan, Jr., Esq. of Weisman, Trogan, Young & Schloss.

For Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Sidney Kogan; Thomas R. Cox, Esq. of Miller, Canfield, Paddock and Stone.

CASE INFORMATION

Submission Agreement signed by Claimants Clarence & Harriet Salzberg on: August 31, 1992.

Statement of Claim filed on: August 31, 1992.

Submission Agreement signed by Respondent, Sidney Kogan on: October 2, 1992.

Joint Statement of Answer filed by Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Sidney Kogan on: November 4, 1992.

Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. did not file a signed Submission Agreement.

HEARING INFORMATION

Hearing Dates/Sessions: May 11, 1993 - 2 sessions
May 12, 1993 - 1 session

Hearing Location: American Arbitration Association, in Southfield, Michigan.

CASE SUMMARY

Claimants, Clarence and Harriet Salzberg ("Claimants") allege that based upon their known conservative nature, age, income, assets and investment objectives, the Respondents recommended investments which were unsuitable for them and this fact was known to Respondents.

Claimants further allege that Respondents specifically recommended, and persuaded Claimants to acquire excessive amounts of unsuitable investments, specifically in Koger related securities. Claimants allege that these recommendations were made by Respondents to them, without proper investigation to the merits of the investments, without proper concern for diversification of the portfolio, and given the Respondents continued recommendations and purchasing of such investments, without proper concern for changing events which affected the market price of these securities.

Claimants allege that the Respondents were fiduciaries of the account. In addition, Claimants allege that Respondents sold these Koger related securities to them through utilization of improper sales tactics including stating that Respondent, Simon Kogan ("Kogan") was acquiring these securities for his own account without considering the differences in their life status and legitimate investment objectives. Furthermore, Claimants allege that various times, Respondents refused to execute Claimants' clear and unequivocal instructions to sell off all or a portion of their interests in Koger related entities.

Respondents maintain that Claimant, Clarence Salzberg ("Dr. Salzberg") is a dentist with ample investment experience, who has purchased and sold numerous stocks, bonds and mutual funds over the years with Respondent, Mr. Kogan.

Respondents maintain that during the time that the Claimants held their Koger investments they received substantial information on Koger, such as The Annual & Quarterly Reports and outstanding dividends. As such, Respondents maintain that Claimants had ample information to assess whether to hold or sell their Koger shares.

Respondents further maintain that Dr. Salzberg often exercised his own independent investment judgment, had specific ideas and made decisions on his own, including his purchases of Koger. Respondents deny any claims that they were responsible or had duties of financial planners or investment advisors or any fiduciary duty. Rather, they maintain any duty was transactional in nature and was properly discharged. In addition, Respondents maintain that at all times they accurately described the investments, disclosed the nature and scope of risks, made a determination of suitability where required, and disclosed commissions and all other material information. Furthermore, the Respondents maintain that the investments were suitable, that there was sufficient diversification and that Respondent, Merrill Lynch exercised proper supervision in all respects.

RELIEF REQUESTED

Claimants requested damages in the amount of \$50,000.00 as out-of-pocket loss, plus interest at 12%, all costs, attorney's fees, punitive and exemplary damages, RICO damages and rescission of all transactions.

Respondents requested that the Claim be dismissed in its entirety.

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. The Claim is hereby dismissed in its entirety.
2. Each party shall bear their respective costs of this action, including attorneys fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

- \$150.00 - Non-refundable Filing Fee.
- \$1,500.00 - Hearing Sessions Fees (3 sessions x \$500.00)

Total Forum Fees of \$1,650.00 shall be assessed equally between the Claimants and Respondents.

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1. Accordingly, Claimants are hereby assessed one half of the forum fees in the amount of \$825.00. Claimants are entitled to offset this amount with the \$650.00 previously deposited with the NASD, Inc. Therefore Claimants shall pay the balance of \$175.00 to the NASD, Inc.
2. Respondents, Merrill Lynch Pierce Fenner & Smith and Sidney Kogan are hereby jointly and severally assessed one half of the forum fees in the amount of \$825.00 and shall pay this amount to the NASD, Inc.

Concurring Arbitrators' Signatures
Name


Alan Schenk

Public/Arbitrator

Date of Decision: July 12, 1993

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Concurring Arbitrators' Signatures

Name

Industry/Arbitrator


Jay B. MacKenzie

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Concurring Arbitrators' Signatures

Name

Public/Chairperson


John A. Hubbard, Esq.

Date of Decision: July 12, 1993