

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

Mary Anne Bromelmeier

92-03121

**Name of Respondents**

Merrill Lynch Pierce Fenner & Smith Inc  
Ted Goble

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**REPRESENTATION**

For Claimant Mary Anne Bromelmeier ("Claimant"): James P. Cullen, Esq. of Rego, Cullen & Hagan Co., L.P.A.

For Respondents Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill") and Ted Goble ("Goble"): Charles L. Henderson, Esq. of Merrill.

**CASE INFORMATION**

Statement of Claim filed: September 15, 1992.

Motion to Amend Demand filed: June 18, 1993.

Claimant's Submission Agreement signed on: September 2, 1992.

Joint Statement of Answer filed by Respondents on: November 16, 1992.

Respondent Merrill's Submission Agreement signed on: November 16, 1992.

Respondent Goble's Submission Agreement signed on: November 13, 1992.

**HEARING INFORMATION**

Hearing Date/Sessions: June 25, 1993/1 session

Hearing Location: NASD offices located in Cleveland, Ohio.

**CASE SUMMARY**

Claimant alleges she received a check from the State Teachers Retirement

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Service("STRS") which she desired to invest more productively than STRS. Claimant further alleges she contacted Respondent Goble and mentioned to him that this money was from a STRS distribution. Claimant further alleges she met with Respondent Goble to discuss investment options and he did not inquire as to the origin of these funds. Claimant alleges that Respondent Goble's failure to make proper inquiry as to the origin of the funds resulted in the funds not being invested in an Individual Retirement Arrangement("IRA") in order to avoid any tax or penalty incurred. Claimant alleges her tax accountant maintained that a taxable event had occurred as a result of the STRS distribution not being rolled over into an IRA, wherein she contacted Respondents who indicated that nothing could be done. Finally, Claimant concedes that a notification may have been received by STRS as to the roll-over requirements; however, she does not recall receiving or reading such a document and assumes she could rely on Respondents' expertise and advice in financial matters.

Respondents maintain that Claimant did not inform Respondent Goble the funds at issue were from her STRS and that Respondent Goble had no way to know that this deposit should have been for Claimant's IRA. Respondents further maintain Claimant was placed on notice regarding the tax ramifications of her distribution by the tax rules enclosure included in every withdrawal from the State Teachers Retirement Plan which explained the tax ramifications should the distribution not be rolled over to an eligible plan within sixty (60) days after the date of the distribution check. Respondents contend it was Claimant's responsibility to supply Respondent Merrill or Goble with this information. Respondent Goble asserts he would have properly advised Claimant had he been notified the funds in question were from an eligible retirement plan. Finally, Respondent Goble maintains that when he was notified of the deposit of funds to Claimant's cash account he contacted her and discussed switching her cash account to a Cash Management Account; however, there was no discussion that the funds in question were from a retirement plan.

#### **RELIEF REQUESTED**

Claimant requested: actual damages in the amounts of \$4,043.78, plus interest at the statutory rate of ten (10%) percent from April 15, 1991.

Respondents requested: that Claimant's claim be denied in its all respects and costs.

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**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Respondents are hereby dismissed;
2. All other claims are dismissed;
3. Each party shall bear its respective costs, except that Respondents are hereby liable, jointly and severally, and shall pay to Claimant the sum of \$50.00. Said amount to reimburse to Claimant half of the \$100.00 hearing session deposit previously paid to the NASD by Claimant.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$50.00 non-refundable filing fee previously deposited by Claimant and the following Forum Fees are assessed.

1 session X \$100.00 = \$100.00 minus hearing session deposit of \$100.00 = net \$0.00 due.

**Forum Fees Assessed Against:**

1. Claimant is hereby liable in the amount of \$50.00; however, in lieu of further payment, the NASD shall retain the \$100.00 hearing session deposit previously deposited by Claimant and Claimant shall be reimbursed by Respondents as noted above;
2. Respondents are hereby liable, jointly and severally, in the amount of \$50.00; however in lieu of further payment, Respondents shall reimburse Claimant the sum of \$50.00 as noted above.

Arbitrator Signature

  
Michael A. Wypasek/Public Arbitrator

Date of Decision: August 2, 1993