

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the Matter of the Arbitration Between

Name of Claimant

Paul J. Cotugno, as Trustee

and

92-03209

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

**REPRESENTATION OF PARTIES**

Paul J. Cotugno, as Trustee ("Claimant") appeared *pro se*.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") was represented by Charles L. Henderson, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 23, 1992. Submission Agreement of Claimant was signed on October 22, 1992.

Statement of Answer was filed by Respondent on or about December 22, 1992. Submission Agreement of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. was signed on December 21, 1992 by John R. Cummings.

**HEARING INFORMATION**

The hearing was held on Tuesday, August 3, 1993 in Dallas, Texas for a total of two (2) sessions.

**CASE SUMMARY**

Claimant alleged that Respondent engaged in fraudulent nondisclosure, intentional misstatements, and unconscionably failed to disclose the markup on the bonds at issue in this matter. It was further alleged that the transactions in question were inconsistent with his investment objectives. The bonds at issue in this matter are District of Columbia Housing Bonds and Virginia State Housing Bonds. Claimant also alleged that Respondents violated federal and state securities statutes.

Respondent denied the allegations set forth in the Statement of Claim. It was stated by Respondent that Mr. Cotugno was a knowledgeable and sophisticated investor and was well aware of the call provisions of the bonds in question in this matter. Respondent also asserted the following affirmative defenses, the Statement of Claim fails to state a claim for which relief can be granted; Claimant is estopped from asserting the claims set forth in the Statement of Claim due to his own acts and conduct; ratification, approval, acceptance, and acquiescence; failure to mitigate; the claims are time barred by the applicable statutes of limitations and the doctrine of laches; the claims are ineligible for arbitration pursuant to §15 of the N.A.S.D. Code of Arbitration Procedure.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$30,803.00 and punitive damages for a total award in the amount of \$90,000.00.

Respondent requested that this arbitration panel dismiss the claims asserted in this matter in their entirety and assess costs against the Claimant.

### **OTHER ISSUES CONSIDERED & DECIDED**

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 original(s) remain on file with the N.A.S.D.

### **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. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall be and hereby is liable for and shall pay to the Claimant Paul J. Cotugno, as Trustee the sum of *Thirty thousand eight hundred three dollars* (\$30,803.00).
2. No interest is awarded on the above stated sum except in accordance with §41(h) of the N.A.S.D. Code of Arbitration Procedure.
3. Each party shall bear its own costs, expenses and attorney's fees, if any, incurred in this matter not specifically enumerated herein.

**FORUM FEES**

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$150.00 and shall refund as forum fees the hearing session deposit in the amount of \$500.00 previously deposited with the N.A.S.D. by the Claimant. Respondent shall pay to the N.A.S.D. the sum of one thousand dollars (\$1,000.00) as forum fees.

Forum fees are calculated at the rate of \$500.00 per hearing session and \$300.00 for each prehearing conference, if any. *Fees are payable to the National Association of Securities Dealers, Inc.*

Dated:

s/ James S. Raber, Esq.  
James S. Raber, Esq.  
Public Arbitrator, Presiding Chair

August 26, 1993

s/ James M. Lyons, Esq.  
James M. Lyons, Esq.  
Public Arbitrator

August 30, 1993

s/ Robert L. Nash  
Robert L. Nash  
Industry Arbitrator

August 26, 1993