

N.A.S.D. AWARD

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NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Pedro Canavati;
Nazira Canavati

92-03281

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.;
Javier F. Perez

REPRESENTATION

For Claimants: Pedro Canavati and Nazira Canavati were represented by M. Steven Deck, Esq. of the Law Office of John King, located in McAllen, Texas.

For Respondents: Merrill Lynch, Pierce, Fenner & Smith, Inc. and Javier F. Perez were represented by Horacio L. Barrera, Esq., located in Brownsville, Texas.

CASE INFORMATION

Statement of Claim filed: September 29, 1992.

Claimants' Submission Agreement signed on: September 19, 1992.

Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Javier F. Perez on: November 10, 1992.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed on: November 6, 1992 by Michael J. Stewart, First Vice President and Assistant General Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc.

Respondent Javier F. Perez's Submission Agreement signed on: November 3, 1992.

HEARING INFORMATION

Pre-Hearing Conference: None Held.
Hearing Dates/Sessions: May 18, 1993 for (2) sessions:
May 19, 1993 for (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimants Pedro Canavati and Nazira Canavati ("Canavati") alleged that Respondent Javier F. Perez ("Perez"), while employed by or acting as an agent for Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), misrepresented material facts and induced the Canavatis to make investments which were unsuitable given their investment objectives. The Claimants specifically alleged that:

1. In July of 1985, Mr. and Mrs. Canavati first met with Perez and told him of their desire to invest their funds in safe investments, with no risk at all, and that they did not want to play the market because of the risk. In addition, the Canavatis told Perez that the money was their life savings and that they wanted to preserve the principal for the education of their children and their future. Perez recommended "Ginny Mae bonds" or "municipal government bonds" because they had "no risk whatsoever". The Canavatis opened two accounts with Respondents;
2. In 1988, Perez recommended that the investments in the account be shifted to Australian dollars, informing Mr. and Mrs. Canavati that it was a good investment and the only risk was the strengthening of the American dollar which he would watch in order to get them out in time. Upon his recommendation, the Claimants approved the transaction;
3. In late 1988, Perez recommended that the investments be converted to "corporate bonds", claiming that there was little risk in the bonds, about five percent, and that would get them out of the market if there was any change. Apparently, the entire principal of the Canavatis' accounts was placed in such bonds;
4. The Canavatis were unable to understand the account statements and Perez provided them with evasive answers. In 1989, the Canavatis decided to take their money back to Mexico and told Perez that they wanted to liquidate their investments. Perez advised against it, providing several excuses over a period of

time. Perez eventually agreed to pay the balance of the accounts. However, when payment was made, the Canavatis discovered that the account balances had severely declined. Perez advised them that the decline was because of the decline in value of the bonds, that it had been too late to get them out and that he had waited hoping the market would turn around:

5. Perez told them that the money was gone, but agreed to pay them the balance of the money they had lost in installments. Some payments were made, but eventually Perez told the Canavatis that no further payments would be made because he was "broke."

Based upon the above allegations, Mr. and Mrs. Canavati asserted claims for violation of Federal and State securities laws: violation of the NASD Rules of Fair Practice and NYSE rules: common law fraud and misrepresentation: breach of fiduciary duty; and breach of contract. In addition, the Claimants alleged that Merrill Lynch failed to adequately supervise Perez.

Respondents Merrill Lynch and Perez denied the material allegations of the Statement of Claim, alleging that:

1. The preservation of principal and education of the children was not an account objective because the Claimants opened a Cash Management Account which gave them checking account and credit card privileges, which the Claimants started using as a means of extending credit against their account. By the time the account was liquidated, the account had been charged to its limit;
2. Perez advised the Claimants of the risks entailed and the types of investments that were chosen before the Claimants made any investment decisions;
3. Sometime in 1988, the Claimants started to use their credit cards to seek larger credit extensions. Perez was told that due to financial troubles, Canavati needed to produce a larger return on his investment. Perez advised Canavati that his borrowing against the account and the resulting interest charges were negatively affecting the account. Canavati requested that the Respondents purchase higher risk investments in hopes of gaining a higher rate of return;
4. The Claimants always received their account summaries and never complained of their format or their failure to understand them. No item was misrepresented to them;
5. When the Claimants requested liquidation of the accounts, they were advised that liquidation would produce a loss. The delay was because the Claimants chose to wait in hopes of recovering the market loss. The Claimants were given

a full accounting upon liquidation:

6. The Respondents acted in good faith and did not violate any securities laws. Any losses were the result of market conditions and Mr. Canavati's insistence in investing in securities of higher risk and return:

7. Merrill Lynch maintained an adequate and reasonable system of supervision.

RELIEF REQUESTED

Claimants requested entry of an award against Respondents for an amount of actual damages in excess of \$153,000.00 consisting of the commissions earned and the decline in value of the accounts; punitive damages for breach of fiduciary duty, common law and statutory fraud, and misrepresentations; and attorneys' fees, costs and interest.

Respondents requested that all claims be dismissed with prejudice and that the Respondents have such other relief as may be required.

OTHER ISSUES CONSIDERED & DECIDED

The Panel determined that the record would remain open for the filing of post-hearing submissions. All post-hearing submissions were forwarded to the Panel for their consideration.

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 pleading, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) sessions x \$750.00 per session = \$3,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimants, Pedro Canavati and Nazira Canavati. Claimants Pedro Canavati and Nazira Canavati are liable for and shall pay to the NASD additional forum fees in the sum of \$750.00. In addition, Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Javier F. Perez are jointly and severally liable for and shall pay to the NASD forum fees in the sum of \$1,500.00.

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

Concurring Arbitrators' Signatures

Name

Date

August 26, 1993

Chairperson

Walton L. Huff

August 26, 1993

Walton L. Huff

Public Arbitrator

August 26, 1993

4-3-93