

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Gayle E. Brookfield

92-03573

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Joe Vazza
David Sims
Michael Zirpolo
Fred Mitchell

REPRESENTATION

Claimant Gayle E. Brookfield ("Claimant") represented herself.

For Respondents Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS"), Joe Vazza ("Vazza"), David Sims ("Sims"), Michael Zirpolo ("Zirpolo") and Fred Mitchell ("Mitchell"): Dominick F. Evangelista, Esq., of Bressler, Amery et al.

CASE INFORMATION

Statement of Claim filed: October 22, 1992.

Amended Statement of Claim filed: February 19, 1993.

Reply to Individual Respondents' Motion to Dismiss dated: March 19, 1993.

Reply to Individual Respondents' Reply to Claimant's response to Respondents' Motion to Dismiss dated: April 12, 1993.

Claimant's Submission Agreement signed on: March 8, 1993.

Individual Respondents' Joint Statement of Answer filed: January 21, 1993.

All Respondents Joint Statement of Answer to the Amended Statement of Claim filed: March 8, 1993.

Individual Respondents' Joint Motion to Dismiss filed: March 15, 1993.

All Respondents Joint Reply to Claimant's response to Respondents' Motion to Dismiss Individual Respondents filed: April 12, 1993.

Respondents Vazza, Sims and Zirpolo's Submission Agreements signed on:

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March 4, 1993.

Respondent Mitchell's Submission Agreement signed on: December 30, 1992.
Respondent MLPFS's Submission Agreement signed on: March 10, 1993.

HEARING INFORMATION

Pre-Hearing Conference: July 26, 1993/1 session/1 arbitrator
 August 2, 1993/1 session/1 arbitrator

Hearing Dates/Sessions: August 4, 1993/2 sessions/3 arbitrators
 August 5, 1993/2 sessions/3 arbitrators
 August 9, 1993/1 session/3 arbitrators

Hearing Location: NASD, New York, NY

CASE SUMMARY

Claimant alleged Mitchell purchased partnerships for her of \$10,000.00 each in Marriott Residence Inn, Marriott Residence Inn II and Fairfield Inn, among others. Claimant alleged she relied on his assurances the partnerships were appropriate investments for her; that Mitchell stated he was buying them for his mother; and that they all paid at least ten (10%) percent in return. Further, Claimant alleged Mitchell characterized these limited partnerships as stable, secure and more profitable than they really were. Claimant alleged Mitchell did not advise her that the issues were risky, difficult to sell and would complicate the preparation of her tax returns. Claimant alleged Mitchell knew she was a conservative investor.

Claimant also alleged that after Mitchell left MLPFS, her account was turned over to Frank Dunne and less than a year later to Zirpolo. She further alleged that she met with each of these men to review her account, however, her requests for information on evaluating the limited partnerships were ignored. Claimant also alleged that MLPFS ceased to indicate a "market value" of limited partnerships on its Cash Management Account ("CMA") reports.

Claimant alleged Zirpolo spoke with Sims and Vazza about her situation, however, she was not contacted. In addition, Claimant alleged she communicated her concerns to Zirpolo in person and in writing and did not receive information on evaluating the partnerships after he stated he would provide it to her.

Claimant amended her Statement of Claim alleging that Sims, Vazza and MLPFS failed to exercise supervisory responsibilities over Mitchell and Zirpolo.

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Respondents maintained Claimant opened a non-discretionary securities brokerage account with her former financial consultant, Rob Saar ("Saar") which subsequently converted to a CMA. Respondents asserted Claimant advised Saar she had an approximate annual salary of \$28,000.00, a net worth of at least \$75,000.00, and maintained a securities account with Dean Witter Reynolds. Respondents maintained that when Mitchell became Claimant's financial consultant she indicated she was also the beneficiary of a trust account and that her objectives were long-term capital growth which would generate income.

Respondents contended Mitchell spoke with Claimant in connection with two (2) stocks which were purchased in her IRA account by her former financial consultant. Respondents asserted Claimant indicated she was uncomfortable with the price fluctuations relating to her common stock investments and wished to invest primarily in municipal bonds and fixed instruments. Respondents maintained Claimant indicated a desire to diversify her portfolio several years later, whereby Mitchell recommended the purchase of several limited partnership investments. Respondents asserted Mitchell discussed each proposed investment with Claimant; Claimant was provided with a prospectus prior to purchasing; and that prior to investing, Claimant communicated with Mitchell in connection with each limited partnership investment. Respondents contended that after reviewing all the information provided by Mitchell, Claimant authorized him to purchase the partnerships in question; received a trade confirmation after each transaction and was again provided with a prospectus for each investment which disclosed the nature and risks of the investment. Respondents alleged Claimant did not express dissatisfaction in connection with the investments and seemed satisfied with them. Finally, Respondents asserted the limited partnerships were suitable for Claimant.

Respondents Vazza, Sims and Zirpolo moved for dismissal from this proceeding in that Claimant alleged various acts of misconduct on the part of Mitchell in connection with the limited partnerships; however, she did not allege misconduct on the part of these Respondents.

Claimant objected to the motion to dismiss of Respondents Vazza, Sims and Zirpolo as she alleged that Vazza and Sims failed to exercise supervisory responsibility over Mitchell and Zirpolo. Claimant further alleged that Zirpolo failed to provide a level of service one might reasonably expect from a financial consultant, in that Zirpolo failed to produce certain papers he maintained she signed concerning the limited partnerships.

Respondents maintained Claimant alleged no facts to support the failure to

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supervise on the part of Vazza and Sims, except that she claimed her current financial consultant, Zirpolo, had spoken to Vazza and Sims and that she had not heard from either individual. Respondents asserted that Claimant's allegations concerned the purchase of partnerships during the period Mitchell, not Zirpolo, serviced her accounts and that Zirpolo had no connection to the purchase of the investments at issue. Further, Respondents contended Claimant's belief that Zirpolo spoke with Vazza and Sims and her allegation that they had not contacted her could not be construed as a failure to supervise.

Claimant alleged she initiated arbitration proceedings because Mitchell misrepresented the nature of the limited partnerships at issue. Claimant further alleged that efforts on her part to obtain information about these investments from Zirpolo were useless. Claimant also alleged that if Vazza and Sims did not have supervisory responsibility over Mitchell and/or Zirpolo she requested that MLPFS advise her who was their supervisor. Finally, Claimant alleged it was her belief that Vazza and Sims had supervisory responsibilities over Zirpolo and/or Mitchell and that Zirpolo failed to provide a proper level of service.

RELIEF REQUESTED

Claimant requested: MLPFS assume ownership of the limited partnerships; actual damages in the amount of \$15,090.00; accountant's fees in the amount of \$1,850.00; arbitration costs; and punitive damages in the amount \$100,000.00.

Respondents requested: Claimant's Statement of Claim be dismissed with prejudice; Respondents Vazza, Sims and Zirpolo be dismissed as Respondents and Claimant be ordered to pursue her remedy against MLPFS and Mitchell; and costs.

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 originals remain on file with the NASD;

The arbitrators have determined they shall grant the Joint Motion to Dismiss of the Individual Respondents;

The arbitrators have determined they shall deny Claimant's request for a reasoned opinion.

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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. Claimant Gayle E. Brookfield's claims against Respondents Merrill Lynch Pierce Fenner & Smith, Inc., Joe Vazza, David Sims, Michael Zirpolo, and Fred Mitchell are hereby dismissed;
2. Claimant Gayle E. Brookfield's claims against Respondents Merrill Lynch Pierce Fenner & Smith, Inc., Joe Vazza, David Sims, Michael Zirpolo, and Fred Mitchell for punitive damages are hereby dismissed;
3. All other claims are dismissed;
4. Each party shall bear its own costs.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$120.00 non-refundable filing fee previously deposited by Claimant and the following Forum Fees are assessed.

2 pre-hearing conference sessions X \$300.00 = net \$600.00 due

5 sessions X \$400.00 = \$2,000.00 minus hearing session deposit of \$400.00 = net \$1,600.00 due.

Forum fees Assessed Against:

1. Claimant Gayle E. Brookfield hereby is liable in the amount of \$1,300.00. The NASD shall retain the \$400.00 hearing session deposit previously deposited by Claimant, therefore, the sum due and owing to the NASD equals \$900.00;
2. Respondent Merrill Lynch Pierce Fenner & Smith, Inc. is hereby liable and shall pay to the NASD the sum of \$1,300.00.

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

Arbitrator Signature

A handwritten signature in cursive script, appearing to read "Milton P. Aeder", written over a horizontal line.

Milton P. Aeder/Industry Arbitrator

Date of Decision: September 9, 1993

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

Arbitrator Signature

Date of Decision: September 9, 1993

Pamela H. Roderick
Pamela H. Roderick/Public Arbitrator

Aug 24 1993

RAYMOND MARDINEY
Notary Public, State of New York
No. 24-25800 Qual. in Kings Co.
Commission Expires March 30, 1995

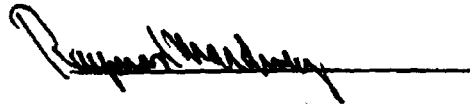
Raymond Mardiney

STATE OF NY

COUNTY OF Kings

On this 24 day of Aug, 1993, before me personally appeared Pamela H. Roderick known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she/he executed the same.

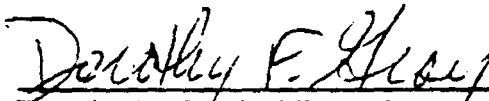
RAYMOND MARDINEY
Notary Public, State of New York
No. 24-23600 Qual. in Kings Co.
Commission Expires March 30, 1995
1995



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

Arbitrator Signature

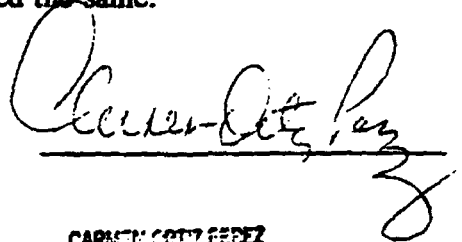

Dorothy F. Gray/Public Arbitrator

Date of Decision: September 9, 1993

STATE OF

COUNTY OF

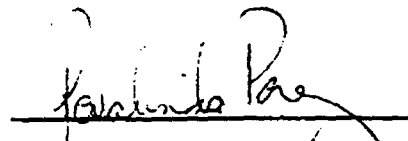
On this 25 day of August, 1993, before me personally appeared Dorothy F. Gray known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she/he executed the same.



CARMEN ORTIZ PEREZ
Notary Public, State of New York
No. 31-402513
Qualified in New York County
Commission Expires Jan. 31, 1996

STATE OF *New Jersey*
COUNTY OF *Hudson*

On this *9th* day of *Sept*, 1993, before me personally appeared Milton P. Aeder known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that she/he executed the same.



ROSALINDA PEREZ
NOTARY PUBLIC OF NEW JERSEY
MY COM. THROUGH EXPIRES NOV. 13, 1996