

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

David C. Hastings

No. 92-03678

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Jon M. Fletcher
Therese K. Waigand
Jim Svenstrup

REPRESENTATION OF PARTIES

Claimant appeared pro se.

For Respondents: Elizabeth G. Armstrong, Esq., of Merrill Lynch, Pierce, Fenner & Smith, Inc. New York, New York.

CASE INFORMATION

Statement of Claim filed: October 29, 1992.

Claimant's Submission Agreement signed on: October 20, 1992.

Joint Statement of Answer filed by the Respondents on: December 15, 1992.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed on: December 14, 1992.

Respondent Therese K. Waigand's Submission Agreement signed on: January 6, 1993.

Respondent Jim Svenstrup's Submission Agreement signed on: January 18, 1993.

Respondent Jon M. Fletcher's Submission Agreement signed on: January 18, 1993.

HEARING INFORMATION

Hearing date: May 13, 1993. Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant, David C. Hastings ("Claimant") alleged: Fraud; failure to enter reinvestment orders correctly; unsuitable investments; misstatements and omissions, failure to supervise; breach of fiduciary duty; and gross negligence on the part of Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Jon M. Fletcher, Therese K. Waigand, and Jim Svenstrup ("Respondents"). The allegations arose out of transactions in the following securities: Lincoln Neb. Elec. Sys. Rev. Pwr. Supply Facs, a municipal bond; CIF 271st MPS, a corporate bond fund; and ML Basic Value Fund C1 B. Claimant also alleged that Respondents had not kept promises made to him, and that the misstatements made to the Claimant were relied on to Claimants detriment in purchasing the aforementioned securities. Claimant further alleged that Respondents had not fully informed him concerning his investments, and had alleged that it had been Respondents obligation to understand the investments before selling them to the Claimant. Lastly, Claimant alleged that he did not receive a prospectus for CIF prior to the time he had purchased the security.

For their Answer, Respondents denied any and all instances of wrongdoing or liability in the Statement of Claim. In addition, the Respondents asserted the following affirmative defenses:

1. Claimant's claims are barred by the relevant statute of limitations.
2. Claimant's claims are barred by equitable principals of ratification, estoppel, waiver and laches.
3. Claimant has sustained no losses from the transactions at issue.
4. Claimant is barred from claiming punitive damages in this forum.

RELIEF REQUESTED

Claimant requested an award of \$4,740.00 for damages sustained in his Lincoln and CIF investments, and \$225.00 for damages sustained in his ML Basic Value Fund investment.

Respondents requested that the Statement of Claim be dismissed, and that costs be assessed against the Claimant in favor of Respondents.

OTHER ISSUES CONSIDERED & DECIDED

On April 15, 1993, Claimant filed an Update to the Claim. On May 3, 1993, the NASD received Respondent's response. After review of the Update and the response, and deliberation, the undersigned arbitrator denied the update. However, the arbitrator would allow, if permitted at the hearing, the update to the claim to be resubmitted as a closing argument. At the Close of the hearing on May 13, 1993, Arbitrator Moenning accepted the Update, and also accepted the response to the Update.

The parties have agreed that the Award in this matter may be executed by 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 remains on file with the NASD.

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, David C. Hastings' claims are hereby denied and dismissed with prejudice.

OTHER COSTS

Each party shall pay its own cost, expenses, and attorneys' fees. Claimant shall pay two-thirds of the forum fees incurred, and Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. shall pay one-third of the forum fees incurred in this arbitration, as set forth more specifically below.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

$$2 \text{ hearing sessions} \times \$100.00 = \$200.00$$

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$50.00, and shall retain the hearing session deposit in the amount of \$100.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$33.33 are assessed against Claimant.

Additional forum fees in the amount of \$66.67 are assessed against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

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

ARBITRATOR'S SIGNATURE

Dated:

May 24, 1993

/s/ Richard C. Moenning
Richard C. Moenning
Presiding Chair
Public Arbitrator

Date of Service by the NASD: 5-24-93