

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Maxine M. Marcus

92-03978

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 24, 1992, Claimant Maxine Marcus, who appeared Pro Se, alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. through its registered representative, John Zappitello, who has since left the office, misled her into investing in 4 units of the Equitable Capital Partners, Limited Partnership, which she was led to believe was a "sure thing". The Claimant further alleged that when she moved her account from the Respondent firm, she attempted to get money from the Limited Partnership and was unable to do so, and further, the account has continued to lose money and pays less interest than a bank. The Claimant contended that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. should be held liable for the losses she has incurred.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its in-house counsel, Christopher D. Cavuoti, Esq., maintained that the investment in question was presented properly to the Claimant and was a suitable investment for her IRA. The Respondent further maintained that the Claimant received a prospectus for this investment, and also that she has been receiving interest payments on this investment. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. contended that it committed no wrongdoing and should not be held liable in this matter.

RELIEF REQUESTED

Claimant Maxine Marcus requested \$4,000.00 in actual damages.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David A. Townsend, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 16, 1992 and by the Respondent on February 1, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Maxine Marcus against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, DAVID A. TOWNSEND, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Signature of Arbitrator

DATE OF DECISION: June 29, 1993