

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Roberta Chapey

Case #

vs.

92-04136

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc.  
Frederick B. Mitchell, III

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**REPRESENTATION**

Claimant, Roberta Chapey, was not represented by counsel.

For Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPF&S") and Frederick B. Mitchell, III ("Mitchell"), Dominick Evangelista, Esq., from the law firm of Bressler, Amery & Ross located in Morristown, New Jersey.

**CASE INFORMATION**

Statement of Claim was filed on December 7, 1992.

Claimant's Submission Agreement was signed on January 12, 1993.

Reply to Respondents' Objections to Bar dated February 10, 1993.

Motion to Bar dated March 26, 1993.

Second Reply to Respondents' Objection dated March 30, 1993.

Response to Respondents' Counter Statement dated August 16, 1993.

Amendment to Statement of Claim dated August 26, 1993.

Response to Respondents' Joint Statement of Answer to Claimant Amended Statement of Claim dated September 16, 1993.

Joint Statement of Answer was filed by Respondents, MLPF&S and Mitchell, on February 26, 1993.

Respondent, MLPF&S, did not sign a Submission Agreement.

Respondent, Mitchell's, Submission Agreement was signed on April 5, 1993.

Objection to Exhibit attached to Statement of Claim dated March 2, 1993.

Second Objection to Exhibit attached to Statement of Claim dated March 15, 1993.

Joint Statement of Answer to Claimant's Amended Statement of Claim dated September 7, 1993.

### **HEARING INFORMATION**

Hearing Dates/Sessions:           November 12, 1993   -       2 sessions  
  April 13, 1994       -       2 sessions.

Hearing Location: New York, New York.

### **CASE SUMMARY**

Claimant commenced this arbitration to recover damages as a result of the unsuitable investment of Claimant's funds in Equitable Capital Partners Fund ("Equitable Capital"). Claimant alleges that she contacted Mitchell on the recommendation of a friend who was also a client of Mitchell in order to invest \$18,070.44 that she held in an Individual Retirement Account ("IRA"). Claimant alleges that she informed Mitchell that she had no other IRA, earned a salary of \$32,712.00 and that her investment objectives was safety of principal for retirement. Claimant also alleges that she inquired about Government Income Multipliers but Mitchell said that they were extremely conservative for Claimant and would yield only nine percent. Claimant further alleges that Mitchell gave him written information concerning Equitable Capital and that Mitchell in response to Claimant's inquiry about the risks said that the investment was thoroughly researched and recommended by MLPF&S' research department.

Respondents assert five affirmative defenses and deny any claim of wrongdoing concerning the handling of Claimant's account. Respondents specifically deny that they gave misleading advice to Claimant concerning Equitable Capital. Respondents contend that the investment was suitable for Claimant.

Respondents allege that Claimant met with Mitchell in August, 1988 and they reviewed her investment objective which was long term growth and income. Respondents alleges that Claimant in September, 1988, authorized the investment of \$8,000.00 in Equitable Capital and \$9000.00 in zero coupon bonds. Respondents maintain that Claimant received \$3,300.00 in distribution which were reinvested through her IRA into a money market fund, where she earned additional dividends.

### **RELIEF REQUESTED**

Claimant requests restitution of her original investment, \$8,000.00 plus reasonable interest at the rate she would have earned had she invested in zero coupon bonds as she requested, totalling \$15,000.00.

Respondents request that the Statement of Claim be dismissed with prejudice and that Claimant be assessed the costs, including reasonable attorney's fee, of this arbitration.

### **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.

### **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. All claims asserted by Claimant are denied in their entirety.
2. All other claims for relief are denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed.

\$100.00	-	Non-refundable filing fee
\$1,600.00	-	Hearing session fees (4 sessions x \$400.00 = \$1,600.00)
\$1,700	-	Total Fees

1. Claimant is assessed \$100.00 non-refundable filing fee.
2. Claimant is further assessed \$800.00 in hearing session fees. Claimant previously paid \$500.00 and owes a balance of \$400.00.
3. Respondent, MLPF&S, is assessed \$800.00 in hearing session fees.

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

**ARBITRATION PANEL**

Murray I. Sommer, Esq.	-	Public Chairperson
John S. Ware, III	-	Public Panelist
Alvin Meentemeier	-	Industry Panelist

Concurring Arbitrator's Signature

*Murray I. Sommer*  
Murray I. Sommer, Esq.

Date of Decision: May 5, 1994

**STATE OF NEW YORK  
COUNTY OF**

**S.S.:**


On this <sup>nd</sup> 77 day of April, 1994, before me personally appeared Murray I. Sommer, Esq. who executed the foregoing instrument and duly acknowledged to me that he executed the same.

*Kevin L. Cook*  
**KEVIN L. COOK**  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02C04838105  
QUALIFIED IN WESTCHESTER COUNTY  
MY COMMISSION EXPIRES NOV. 30, 1995

**ARBITRATION PANEL**

Murray I. Sommer, Esq.	-	Public Chairperson
John S. Ware, III	-	Public Panelist
Alvin Meentemeier	-	Industry Panelist

Concurring Arbitrator's Signature

  
Alvin Meentemeier

Date of Decision: May 5, 1994

STATE OF NEW JERSEY  
COUNTY OF gnd

S.S.:

On this 29th day of May, 1994, before me personally appeared Alvin Meentemeier who executed the foregoing instrument and duly acknowledged to me that he executed the same.

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County 96  
Commission Expires January 24, 1996

