

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Leonard Hayet IRA Account

Case No. 92-04155

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith Inc
Bernard A. Baer

REPRESENTATION

For Claimant, Leonard Hayet IRA ("Hayet"): Leonard Hayet.

For Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill") and
Bernie Baer ("Baer"): Jonathan A. Schorr, Esq. of Merrill.

CASE INFORMATION

Statement of Claim filed: December 9, 1992. Claimant's Submission Agreement
signed: November 24, 1992.

Respondent, Merrill's, Statement of Answer filed: August 9, 1993. Respondent's
Submission Agreement signed: August 5, 1993 by John R. Cummings on behalf
of Merrill.

Respondent, Baer, did not file a Statement of Answer or sign a Submission
Agreement as required by Sections 12 and 25 of the Code (see "Other Issues").

HEARING INFORMATION

On December 2 and 3, 1993, in Fort Lauderdale, Florida, hearings lasting four
(4) sessions were conducted.

CASE SUMMARY

Claimant alleged that: Respondents were liable for fraud by sending valuation statements which misrepresented the true value of Equitable Capital Partners Retirement Fund LP 88 which was sold to him as conservative investment. Claimant alleged that Respondents failed to deliver a prospectus and failed to advise him of the speculative nature of the investment.

Respondent, Merrill, denied all allegations of wrongdoing and alleged that: Claimant received a prospectus; Claimant was aware of the risks involved; Claimant is a sophisticated investor and punitive damages are not awardable under New York law.

Respondent, Merrill, alleged the affirmative defenses of: statute of limitations; failure to state a claim; failure to particularize facts establishing a legal theory; authorization; acquiescence; market forces caused Claimant's losses; good faith; compliance with all applicable rules and regulations; failure to timely complain; the damages are speculative; and failure to mitigate damages.

RELIEF REQUESTED

Claimant requested damages of \$23,350 plus punitive damages of \$1,000,000.

Respondent, Merrill, requested dismissal of the claim plus, costs, and expenses.

OTHER ISSUES CONSIDERED & DECIDED

1. Subsequent to the filing of this Claim, Respondent, Baer, died.
2. In light of the fact that Respondent, Baer, is deceased and Claimant did not name the Estate as a party, the Panel has dismissed Respondent, Baer, from this proceeding.
2. 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.

Page 3.

NASD Award 92-04155

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Merrill, is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimant's request for punitive damages is denied.

OTHER COSTS

1. Claimant, Hayet, is found liable to Merrill for costs of their expert witness, travel expenses, copying charges and other miscellaneous costs and shall pay to Merrill the amount of \$6,350.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$4,000 (four sessions x \$1,000 per session).
2. Claimant is hereby assessed \$2,000 for which the NASD shall retain the \$1,000 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$1,000.
3. Respondent, Merrill, is hereby assessed \$2,000 payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$250 paid by the Claimant.

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

NASD Award No. 92-04155

Jimmie R. Gregory, Esq.

Richard D. Longacre

Gordon K. Grandy

Public

Date of Decision:

12/17/63