

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Paul Raucci

92-04299

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Robert Dulin

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 28, 1992, Claimant Paul Raucci, who appeared Pro Se, alleged that in 1986 Respondent Robert Dulin, Financial Consultant of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. assured him that his personal interest would be assigned to Claimant's account. Claimant further alleged that Respondent Robert Dulin assured him that Claimant could expect a 30% return on his investment of \$3,000.00, whereby Claimant made it clear to Respondent Robert Dulin that he did not know anything about investing in stocks and bonds, at which time Claimant could trust in Respondent Robert Dulin's professional judgement. Claimant contended that whenever he talked with Respondent Robert Dulin, he was always assured everything was going well, and any transactions being made were in Claimant's best interest; however, since the account was considered small Claimant never pushed the issue. Claimant further contended that in March, 1989 he received a "Margin Call" in the mail and Claimant contacted Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. the next day because he had no idea what a margin call was, since Claimant and Respondent Robert Dulin never discussed buying on margin. Claimant asserted that Respondent Robert Dulin was away at the time, whereby his secretary who appeared surprised that Claimant was not aware of this, explained that Claimant lost \$3,000.00 plus an additional amount. Claimant further asserted that when Respondent Robert Dulin returned his call, he told Claimant not to worry about a thing and to throw the margin call away, whereby Respondent Robert Dulin would take care of it out of his own pocket. Claimant argued that he asked Respondent Robert Dulin to purchase North East Bank Corp. with the remaining money in his account whereby he was told at the time he had \$3,000.00 to invest; and again Respondent Robert Dulin bought more on margin. Claimant further argued that those stocks

failed also and then Claimant was informed he had only \$1,500.00 when he chose to buy N.E.B. Corp. Claimant further alleged that he was told he would have to pay out an additional \$3,500.00 until the stocks were sold for \$5.00 per share. Claimant further contended that the decision to buy N.E.B. Corp. was his own; however, he questioned the legality of purchasing 150 shares of stock at \$34.50 per share with only \$1,500.00 of capital. Claimant further alleged that he also transferred his IRA from Dean Witter Reynolds, Inc. to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and explained from the beginning that he intended this money to be invested safely even giving up on higher earnings, whereby, Claimant left the investing to Respondent Robert Dulin. Claimant further asserted that in five years he lost \$767.00 on his IRA and due to Respondents' actions he lost more in his IRA and general account.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Robert Dulin, by and through their in-house counsel, Christopher P. Cavuoti, Esq., maintained that Respondent Robert Dulin did not assure Claimant Paul Raucci a return of 30%, and denies that Claimant "was not consulted on any trades". Respondents further maintained that all trades, whether solicited or unsolicited, were fully communicated prior to, and after trade execution. Respondents contended that Claimant received a prospectus which fully described the risks, characteristics and benefits of the fund which Claimant invested his IRA in, thus, Respondents are not liable for any alleged losses.

RELIEF REQUESTED

Claimant Paul Raucci requested \$4,517.00 in actual damages.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Robert Dulin requested that the claim be denied in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, George R. Freund, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 15, 1992 and by the Respondents on February 17, 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 claim of Claimant Paul Raucci against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Robert Dulin is dismissed in its 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 Paul Rancci shall be retained by the NASD, Inc.

AFFIRMATION

I, **GEORGE R. FREUND**, 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

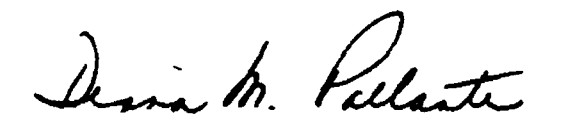
DATE OF DECISION: July 29, 1993

STATE OF: *N.J.*

ss:

COUNTY OF: *Union*

On this 21st day of July 19 93, before me personally appeared George R. Freund to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



DIANA M. PALLANTE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar. 17, 1994