

## **N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

**In the Matter of the Arbitration Between**

**Name of Claimant**

**Dana L. Masonek**

**and**

**92-04371**

**Name of Respondents**

**Merrill Lynch, Pierce, Fenner & Smith, Inc.  
John Northern**

### **REPRESENTATION OF PARTIES**

**Dana L. Masonek ("Claimant") was represented by Jeffrey Cook, Esq. of Sullivan Parker & Cook, Dallas, Texas.**

**Merrill Lynch, Pierce, Fenner & Smith, Inc. and John Northern ("Respondents") were represented by Gregory D. May, Esq. of Munsch Hardt Kopf Harr & Dinan, Dallas, Texas and Janie L. Frank, Esq. of Shannon, Gracey, Ratliff & Miller, L.L.P., Fort Worth, Texas.**

### **CASE INFORMATION**

**The Statement of Claim was filed on or about December 31, 1992. Submission Agreement of Claimant was signed on February 2, 1993.**

**Statement of Answer was filed by Respondents on or about May 3, 1993. Submission Agreement of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. was signed on March 9, 1993 by Michael J. Stewart.**

### **HEARING INFORMATION**

**The hearing was held on Tuesday, October 26, 1993 for two (2) sessions and Wednesday, October 27, 1993 for two (2) sessions in Dallas, Texas for a total of four (4) sessions.**

### **CASE SUMMARY**

**Claimant alleged that Respondents breached their contract; breached their fiduciary duty to her and violated the Texas Deceptive Trade Practices Act. Claimants specifically alleged that these violations and breach were a result of the failure of Respondents to advise her of the tax**

consequences of the distribution she received as a result of her divorce. She also alleged that Respondents failed to advise her to place the proceeds in an appropriate qualified investment.

Respondents denied the allegations set forth in the Statement of Claim. Specifically, Respondents denied that they acted negligently; that they had a contract with the Claimant that would require them to give her tax advice at any time. Respondents further stated that the Claimants damages (if any) were caused in whole or in part by her own contributory negligence in failing to seek tax counseling from an accountant or attorney as she was advised to do.

#### **RELIEF REQUESTED**

Claimant requested an award of unspecified damages, attorney's fees, costs, and treble damages pursuant to the Texas Deceptive Trade Practices Act.

Respondents requested that the claims asserted against them be denied and that Claimant be required to pay the costs of this arbitration.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent John Northern did not file with the N.A.S.D. a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the N.A.S.D. Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the N.A.S.D.

#### **AWARD**

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

1. All claims asserted in this matter shall be and hereby are dismissed in their entirety.
2. Each party shall bear its own costs, expenses and attorney's fees incurred in this matter not specifically enumerated herein.

#### **FORUM FEES**

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount

of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$600.00 previously deposited with the N.A.S.D. by the Claimant. Claimant shall pay to the N.A.S.D. the sum of \$1,800.00 as additional forum fees.

Forum fees are calculated at the rate of \$600.00 per hearing session and \$300.00 for each prehearing conference, if any. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Howard V. Tygrett, Jr., Esq.  
Howard V. Tygrett, Jr., Esq.  
Public Arbitrator, Presiding Chair

November 9, 1993

s/ George C. Witte  
George C. Witte  
Public Arbitrator

November 10, 1993

s/ Michael L. Sain  
Michael L. Sain  
Industry Arbitrator

November 8, 1993