

**N.A.S.D. AWARD**  
**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimant  
Patricia Zuder

Case No:92-04379

Name of Respondents  
Merrill Lynch, Pierce, Fenner & Smith Inc., and  
William E. Hill individually and as Agent and Employee thereof

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**REPRESENTATION**

For Claimant, Patricia Zuder ("Zuder"):  
Arnold Y. Stienberg, Esq., of Arnold Y. Steinberg PA in Boca Raton,  
Florida

For Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc., and William E.  
Hill individually and as Agent and Employee thereof ("Merrill"):

Keith Olin, Esq., of Morgan, Lewis & Bockius in Miami, Florida

**CASE INFORMATION**

Statement of Claim filed: December 30, 1992.  
Claimant's Submission Agreement signed: May 28, 1992.

Respondents', Merrill, (Joint) Statement of Answer  
filed: October 26, 1995.

Respondents', Merrill, Submission Agreement signed, by Faith Heeg on behalf  
of Merrill Lynch, Pierce, Fenner & Smith on: November 9, 1995

Respondent, William Hill, did not sign a Submission Agreement as required by  
Sections 12 and 25 of the Code of Arbitration Procedure ("Code"). (See Other  
Issues)

**HEARING INFORMATION**

On November 9, 1995, in Ft. Lauderdale, Florida, hearings lasting two sessions were conducted.

### **CASE SUMMARY**

Claimant alleged that Broker, Hill, while working for Merrill made unsuitable investments and gave unsuitable advice. Claimant alleges that these investments and advice constituted a violation of the SEC act of 1934 rule 10(b)(5) and the NYSE rule 405. In addition, claimant alleges that Merrill committed fraudulent acts in handling the Zuder account. Claimant claims that Merrill was negligent in its supervision of the account. The products in question are the Putnam High Yield, Mass Financial High Income trust, CRI Insured Mortgage Investment LP, Home Insurance, and Insurance Mortgage Invest. II.

Respondents denied all allegations of wrongdoing and alleged that these matters are ineligible for arbitration as the alleged wrongdoing occurred more than 6 years before the filing of the Statement of Claim. Respondent denies all fraudulent activity.

Respondents alleged the affirmative defenses of comparative negligence, statutes of limitation, ratification, and failure to mitigate damages.

### **RELIEF REQUESTED**

Claimant requested out of pocket damages in the amount of \$43,104.61, plus interest, attorney's fees, and costs.

Respondents requested dismissal of all claims, plus costs.

### **OTHER ISSUES CONSIDERED AND DECIDED**

(1) The Panel finds that Respondent, Hill, was required to sign a Submission Agreement pursuant to sections 12 and 25 of the Code, since the Respondent was either a NASD member or a person associated with and NASD member, at the time the facts giving rise to this transaction occurred.

(2) The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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 NASD.

### **AWARD**

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

- (1) Respondent, Hill, is found not liable and, therefore, all claims against him are hereby dismissed.
- (2) Respondents, Merrill, is found liable, and shall pay to the Claimant the amount of \$ 25,000.
- (3) Claimant's requests for attorney's fees, costs, and interest are denied.

### **OTHER COSTS**

- (1) The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding (including attorney's fees).

### **FORUM FEES**

- (1) Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800.00. ( # Hearing Sessions (2) x \$400.00 )
- (2) Claimant is hereby assessed \$400.00, for which the NASD shall retain the \$400.00 previously deposited in full satisfaction thereof.
- (3) Respondents, Merrill, are hereby assessed \$ 400.00 payable to the National Association of Securities Dealers, Inc.
- (4) The NASD shall retain the non-refundable filing fee of \$120.00 paid by the Claimant.

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

Concurring Arbitrator(s) Signature(s)

Date of Signature(s)

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Monica I Salis, Esq.

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Manny Levine

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R. Christopher Laux

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Dissenting Arbitrator(s) Signature

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Date of Decision:

12/2/95

**RECIPIENTS:**

Monica I. Salis, Esq.  
Manny Levine  
R. Christopher Laux