

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Sherto Pension and Profit Sharing Plan

93-00131

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith Inc.
James Brandys

REPRESENTATION

For Claimants: Edward J. Snyder, Esq. of Snyder and Michalski.

For Respondents: Solor Colon, Esq., of Nixon Hargrave.

CASE INFORMATION

Statement of Claim filed: January 11, 1993.

Claimant's Submission Agreement signed on: January 25, 1993.

Joint Statement of Answer filed by Respondents, James Brandys and Merrill Lynch, Pierce, Fenner & Smith, Inc. on:

Respondent, James Brandy's Submission Agreement signed on: June 16, 1993.
Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement signed on: May 24, 1993.

HEARING INFORMATION

Pre-Hearing Conference: December 3, 1993/1 Session

Hearing Dates/Sessions: December 9, 1993/2 Sessions
December 10, 1993/2 Sessions

Hearing Location: Buffalo, New York

CASE SUMMARY

Claimant alleges that Respondent James Brandys ("Brandys") was instructed to recommend only conservative investments after Claimant suffered a loss on an investment in L.T.V. stock. Claimant further alleges that Respondent Brandys recommended that Claimant invest in Giant Resources, Ltd. ("Giant") and that Respondents sent Claimant reports and correspondence reassuring Claimant that Giant was a sound investment. Claimant further alleges that Giant was a highly speculative investment which was entirely inappropriate for Claimant's investment purposes and that Respondent's recommendation was not prudent.

Respondents maintain that William Oar ("Oar") opened an account with Respondents, representing that the funds in the account were his own. Respondents further maintain that Oar indicated that he wanted growth in the accounts and was willing to take some risk. Respondents further maintain that Oar at no time stated that he wanted only to invest in conservative investments. Respondents further maintain that at the time Respondent Brandys recommended an investment in Giant it was considered a good intermediate term opportunity and that Respondent Merrill Lynch's analyst had a sound basis for this opinion. Respondents also maintain that Oar failed to mitigate damages and that the claims are barred by ratification, estoppel, waiver and laches.

RELIEF REQUESTED

Claimant requests full restitution in the amount of \$30,074.20, plus interest, attorneys' fees and such costs and expenses which may be necessary.

Respondents requests that the claim be dismissed in its entirety and that costs be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

One of the arbitrators was absent for personal reasons. The parties agreed to conduct the arbitration with a panel of two arbitrators.

AWARD

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

- 1) Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is hereby liable and shall pay to Claimant the amount of \$12,000.
- 2) Respondent James Brandys is hereby liable and shall pay to Claimant the amount of \$4,000.
- 3) Claimant's request for interest is denied.
- 4) Claimant's request for attorneys' fees is denied.
- 5) Forum fees shall be divided equally between claimant and jointly and severally against respondents.

FORUM FEES

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

\$120	Non-refundable filing fee
\$300	Pre-hearing conference fee
\$1,600	Hearing session fees(4 sessions X \$400)

Claimant is hereby liable and shall pay to the NASD forum fees in the amount of \$1,010. Claimant is entitled to deduct from this amount the \$520 previously paid to the NASD.


Respondents James Brandys and Merrill Lynch, Pierce, Fenner & Smith, Inc. are jointly liable and shall pay to the NASD the sum of \$1,010.

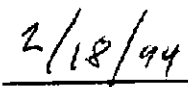
Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature

Name

Public/Industry


Charles B. Border


Industry Arbitrator

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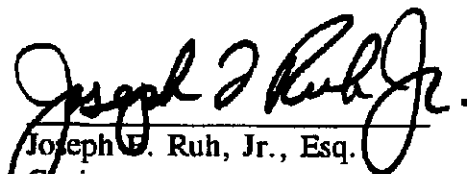
Respondents James Brandys and Merrill Lynch, Pierce, Fenner & Smith, Inc. are jointly liable and shall pay to the NASD the sum of \$1,010.

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Concurring Arbitrator's Signature

Name

Public/Industry


Joseph P. Ruh, Jr., Esq.
Chairman

Public Arbitrator

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 14 day of Feb, 1994, before me personally appeared Joseph F. Ruh, Jr., Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Barbara Bayler

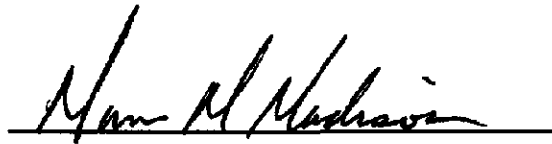
Notary Public in and for the State of New York
in and for the County of New York
Commission Expires June 1, 1994

STATE OF: New York
COUNTY OF: ~~New York~~ **ERIE**

S.S.:



On this 18 day of FEBRUARY, 1994, before me personally appeared Charles B. Border known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



MARVIN M. MADISON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires August 31, 19 95

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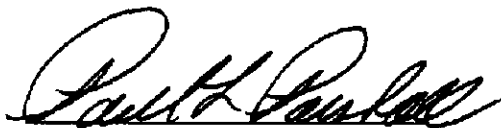
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Concurring Arbitrator's Signature

Name

Public/Industry


Paul L. Parshall

Public Arbitrator

STATE OF: ~~New York~~ OHIO
COUNTY OF: ~~New York~~ SCHUYLER

S.S.:

On this 15th day of Feb., 1994, before me personally appeared Paul L. Parshall known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Betsy J. Bass
/

BETSY HAMM BASS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 1-31-99