

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Allan N. Goberman

93-00405

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc  
Gregory H. Rutter

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**REPRESENTATION**

For Claimant Allan N. Goberman ("Claimant"): David L. Williams, Esq., of the law firm of Morgan, Hallgren, Crosswell & Kane, P.C., Lancaster, Pennsylvania.

For Respondents Merrill Lynch Pierce Fenner & Smith ("Merrill Lynch") and Gregory H. Rutter ("Rutter"): Charles L. Henderson, Esq., Counsel, Litigation Department at Merrill Lynch Pierce Fenner & Smith.

**CASE INFORMATION**

Statement of Claim filed: January 29, 1993

Claimant's Submission Agreement signed on: January 26, 1993

Respondents Merrill Lynch and Rutter (collectively referred to as "Respondents")

Joint Statement of Answer filed on: April 21, 1993

Respondent Merrill Lynch's Submission Agreement signed on: April 20, 1993.

Respondent Rutter's Submission Agreement signed on: March 25, 1993.

**HEARING INFORMATION**

Hearing Dates/Sessions:     March 21, 1994 - 2 sessions  
   June 30, 1994 - 1 session

Hearing Location:     NASD District Office - Philadelphia, Pennsylvania

### CASE SUMMARY

Claimant alleged that Respondents failed to properly execute his order to sell 75,000 shares of RJR Nabisco stock at a price of 11-3/8 per share. Claimant alleged that Rutter confirmed that the completion of Claimant's order for the sale of RJR Nabisco would take place on May 14, 1991 at a price of 11-3/8 per share. Claimant alleged that he was subsequently informed that only 2,000 shares of his RJR Nabisco stock were sold and the remaining shares were not sold per his instructions and the representations of Rutter. Claimant alleged that he subsequently sold the remaining 73,000 shares of RJR Nabisco stock on July 9, 1991 at a price of 10-7/8 per share. Claimant alleged that Rutter and Merrill Lynch breached their agreement with Claimant by failing to sell the RJR Nabisco block at a price of 11-3/8 per share.

Respondents categorically denied any and all allegations of wrongdoing. Respondents maintained that Claimant placed a limited order at 11-3/8 for the sale of 75,000 shares of RJR Nabisco stock. Respondents maintained that they informed Claimant that this order was above the current market price for RJR Nabisco stock. Rutter maintained that he placed the order with the block trading desk but gave no guarantee to Claimant that he would receive the price he wanted. Rutter maintained that on May 14 and 15, Claimant was advised that only 2,000 shares had been sold at 11-3/8 and the remaining 73,000 shares were unexecuted. Respondents maintained that Claimant then waited approximately two months before he sold his remaining shares.

Respondents maintained that Claimant failed to state a claim upon which relief can be granted. Respondents maintained that Claimant is barred from recovery because he authorized all transactions in his account. Respondents maintained that Claimant made all investment decisions for his account and any losses suffered were caused by Claimant and due to market conditions outside the control of Respondents. Respondents maintained that all transactions were separately confirmed in monthly statements. Respondents maintained that no timely complaint or objection about Claimant's account was ever made to Merrill Lynch by Claimant.

### RELIEF REQUESTED

Claimant requested actual damages in the amount of \$36,500 based on the difference in value of the limited order sale price of the RJR Nabisco block and the actual sale price. Claimant requested sanctions on Discovery against Respondent Merrill Lynch and Charles L. Henderson, Esq., Counsel, Litigation Department at Merrill Lynch Pierce Fenner & Smith. Claimant also requested

costs, expenses and reasonable attorneys' fees in pursuing the arbitration proceedings.

Respondents requested that Claimant's claim be dismissed in its entirety and that the Panel award Respondents all costs and fees associated with defending this claim.

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

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 remains on file with the NASD.

### **AWARD**

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

1. Claimant's award is denied in its entirety.
2. Claimant's request for sanctions is denied.
3. Each party shall bear their own costs including attorneys' fees, except as specified herein.

### **FORUM FEES**

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

3 sessions X \$400 = \$1200

Forum Fees Assessed Against: Claimant and Respondents equally.  
Claimant is assessed Forum Fees in the amount of \$600, however, Claimant is entitled to offset this amount with his hearing session deposit of \$400 so the amount due from Claimant as Forum Fees is \$200. Respondents are jointly and severally assessed Forum Fees in the amount of \$600.

Goberman Award  
Case No. 93-00405  
Page 4

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

Concurring Arbitrator's Signature  
Name

Public/Industry

Chess B. Faircloth  
Chess B. Faircloth

Public

Date of Decision: July 28, 1994

Goberman Award  
Case No. 93-00405  
Page 4

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Concurring Arbitrator's Signature

Name



Harold A. Stein

Public/Industry

PUBLIC

Date of Decision: July 28, 1994

Goberman Award  
Case No. 93-00405  
Page 4

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

Concurring Arbitrator's Signature  
Name

Public/Industry

Charles W. Lake  
Charles W. Lake

INDUSTRY

Date of Decision: 6/30/94

NASD Date of Decision: July 28, 1994