

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

E.A. and Joye Davis

93-00667

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.  
Charles S. Stiles

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 23, 1993, Claimants E.A. and Joye Davis, by and through Paul N. Young of Securities Arbitration Group, Inc., Los Angeles, CA, alleged that Respondent Charles S. Stiles, Securities Broker employed by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. called them to invest in the market, and Respondent Charles S. Stiles was persistent and persuasive, whereby he told Claimants they could make a lot of money in 2 or 3 months. Claimants further alleged that they let Respondent Charles S. Stiles invest their money, whereby Respondent Charles S. Stiles invested the money in an Australian Bond fund but he never told Claimants about the costs, commissions, fees, risks and volatility involved in the fund. Claimants contended that after several months the value of interest declined by \$2,000.00 whereby Claimants called Respondent Charles S. Stiles, who was adamant that Claimants should not sell out the bond. Claimants further contended that the bond was unsuitable for them and that Respondents made misrepresentations to Claimants, failed to follow instructions, breached their fiduciary duty and violated NASD guidelines, which caused Claimants to lose money in their account. Claimants asserted that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. failed in their oversight of their broker Respondent Charles S. Stiles, thus Respondents are liable for their losses.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Charles S. Stiles, by and through their in-house counsel, Arthur H. Sobel, Esq., maintained that the type of securities Claimants E.A. and Joye Davis purchased were speculative, in accordance with their investment objectives as related to Respondent Charles S. Stiles. Respondents further maintained that Respondent Charles S. Stiles reiterated to Claimants the sum and substance of the research reports issued

by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. whereby Respondent Charles S. Stiles never made a "pitch" and never promised Claimants a "great return". Respondents contended that the recommendation for the purchase of the investment was suitable for Claimants and no misrepresentations were made by Respondent Charles S. Stiles, thus any diminution in value of Claimants' account was due entirely to market factors beyond the control of Respondents.

### **RELIEF REQUESTED**

Claimants E.A. and Joye Davis requested \$10,000.00 in actual damages plus pre or post award interest.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Charles S. Stiles requested the claim be dismissed in its entirety.

### **AWARD**

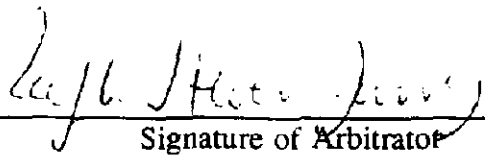
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Ralph Steven Janvey, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 12, 1993, by the Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on April 7, 1993 and by the Respondent Charles S. Stiles on March 29, 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 claims of Claimants E.A. and Joye Davis against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Charles S. Stiles are dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants E.A. and Joye Davis shall be retained by the NASD, Inc. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Charles S. Stiles are liable and shall pay to the Claimant the sum of \$75.00, as partial reimbursement.

AFFIRMATION

I, RALPH STEVEN JANVEY, 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.

  
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Signature of Arbitrator

DATE OF DECISION: June 29, 1993