

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Carlos E. Jofre and Lidilia De Jofre

93-00706

Name of Respondent

Brian E. Spletzer

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 26, 1993, Claimants Carlos E. and Lidilia De Jofre, who appeared Pro Se, alleged that in November, 1991 Claimant Carlos E. Jofre opened an account with Merrill Lynch, Pierce, Fenner & Smith, Inc. and on January 7, 1992 Claimants received a quotation from American Government Certificates & Fund Corporation at which time, Claimants compared the quotation they had with prices that Merrill Lynch's broker, Michael Giacomotti told them he could obtain whereby their prices were better and Claimants decided to transfer their GNMA's to Merrill Lynch. Claimants further alleged that once the certificates were deposited in Merrill Lynch, Claimants obtained a quotation on April 29, and May 29, which prices were higher than the ones they had before whereby Claimants took time to study very carefully the best conditions for the sales of their certificates because they represented the most significant part of their savings. Claimants contended that on June 15, 1992 they phoned and sent a fax to Merrill Lynch asking them to sell all their positions in GNMA with the exception of one and subsequently, one or two days later, Claimants were informed by Merrill Lynch of the prices they obtained, which were much lower than expected. Claimants further contended that the explanation that was given to them by the broker for the lower prices was the lack of liquidity of their GNMA's. Claimants asserted that Merrill Lynch executed an order for the sale of their 15 GNMA's at prices between 2.8 to 14.2% below the prices Claimants specified without their previous approval for those lower prices, thus Claimants consider Merrill Lynch's and its representatives response to their complaint unsatisfactory and they should be held liable for Claimants losses.

Respondent Brian E. Spletzer, by and through Nicholas R. Piccininni, Esq. of Merrill Lynch, Pierce, Fenner & Smith, Inc., requested that the Statement of Claim, naming Brian E. Spletzer

as the sole Respondent be dismissed in its entirety, whereby as admitted in the Statement of Claim, the transaction at issue occurred in or about June, 1992 through Merrill Lynch, Pierce, Fenner & Smith, Inc.'s office in Caracas, Venezuela, the Claimant Carlos E. Jofre subsequently registered a complaint regarding the execution of that transaction. Respondent maintained that at one point, Claimants' complaint was referred to him, an Assistant Vice President in Merrill Lynch, Pierce, Fenner & Smith, Inc. International Operations Department, whereby, Respondent had no involvement whatsoever with the transaction underlying the claim. Respondent further maintained that in responding to their complaint his name was provided to the Claimants as a contact person and this peripheral, after-the-fact connection is remote and absolutely irrelevant, thus, no claim can be sustained against Respondent either individually or as an agent of Merrill Lynch, Pierce, Fenner & Smith, Inc.

RELIEF REQUESTED

Claimants Carlos E. and Lidilia De Jofre requested \$8,549.92 in actual damages.

Respondent Brian E. Spletzer requested the claim be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Leonard S. Alpert, 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 3, 1993, and not by the Respondent as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

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 Claimants' Motion to Bar Respondent's Statement of Answer is denied.
2. This case is dismissed in its entirety as relates to Respondent Brian E. Spletzer. The arbitrator finds that Respondent had no involvement in the underlying transaction that is the subject of the Claimants, Carlos E. and Lidilia De Jofre, Statement of Claim.
3. No finding is made as to the merits of the claim if made against an appropriate Respondent.

4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Carlos E. and Lidilia De Jofre shall be retained by the NASD, Inc.

AFFIRMATION

I, LEONARD S. ALPERT, 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.



Leonard S. Alpert

DATE OF DECISION: August 13, 1993