

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Ann G. Swanson & Russell Swanson

93-01265

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Jacqueline Strauss (Knoll)

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 31, 1993, Claimants Ann G. and Russell Swanson, who appeared Pro Se, alleged that in April of 1987 they met with Respondent Jacqueline Strauss through Claimant Ann G. Swanson's employer, Craig M. Shepard whereby Respondent Jacqueline Strauss looked at their portfolio and told them it was "the portfolio of a retired couple". Claimants further alleged that the portfolio was based entirely on a recent inheritance from a cousin of Claimant Ann Swanson's whereby Claimants had no personal savings, and given their income, did not expect to be able to generate any savings for the foreseeable future. Claimants contended that Respondent Jacqueline Strauss said they were young and needed a portfolio that was more oriented towards growth, and that could be making more money, at which time, Claimants explained to Respondent Jacqueline Strauss that they were not savvy investors, indeed, that they knew nothing about investments, and that money represented virtually all of their assets. Claimants further contended that their joint income at the time was \$29,825.00 and they were both 25 years old whereby Respondent Jacqueline Strauss never once inquired about their financial situation and accordingly did not exercise even the most rudimentary responsibilities of her profession. Claimants asserted that Respondent Jacqueline Strauss was very eager and anxious to take them on as clients yet she never mentioned the term margin, nor did she explain that she would be borrowing more money than Claimants had to purchase stocks. Claimants further asserted that while their statements note borrowing power, they assumed, as with any credit statement, that it meant that is what they could borrow, not what they were borrowing. Claimants argued that while the words margin interest appear on their statements, they were never told what that meant, nor did they have any knowledge of what it might mean. Claimants further alleged that sometime in October, 1987, Respondent Jacqueline Strauss called to inform them that she had to sell stocks to pay for

margin deficits whereby this was the first time they became aware that she had been trading on margin because she had never previously mentioned the word "margin", nor explained the concept before in any conversation, discussion, or individual trade. Claimants further contended that Respondent Jacqueline Strauss called only Claimant Ann G. Swanson when making trades and at no time did Claimants initiate any trade. Claimants further asserted that in sum, it is their firm belief that under no conceivable theory or circumstances could they have been deemed suitable for margin trading. Claimants further argued that they believe that Respondent Jacqueline Strauss acted improperly and in clear violation of legal and fiduciary obligations to them, in addition to Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. failure to supervise, caused them to incur losses.

Respondents Merrill Lynch Pierce, Fenner and Smith, Inc. and Jacqueline Strauss Knoll by and through their in-house counsel Elizabeth G. Armstrong, Esq., maintained that Respondent Jacqueline Strauss Knoll had no business relationship with the Claimants Ann G. and Russell Swanson prior to being contacted in April of 1987 by Claimant Ann G. Swanson. Respondents further maintained that Claimant Ann G. Swanson expressed dissatisfaction with her Kidder, Peabody broker and sought the assistance of another broker. Respondents contended that it was Respondent Jacqueline Strauss Knoll's practice to mail transfer and account opening forms to clients prior to a scheduled meeting in order to give them an opportunity to review the documentation prior to their discussion. Respondents further contended that the account statements for Claimant Ann G. Swanson's Kidder Peabody account, as well as Mr. Craig Sheppard's Affidavit, refute her allegation that she "did not have any knowledge of investments", and according to the Kidder account statements, Claimant Ann G. Swanson, then known as Ann Gerson, actively traded equities for two years prior to opening her account at Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc., whereby Claimants clearly were interested in continuing with Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. the equity trading strategy she utilized in the Kidder Peabody account. Respondents asserted that at all times, Claimants received monthly statements and trade confirmations evidencing the trading in their account and as adults responsible for their investment decisions, it is inconceivable that they would never confirm the amount they were investing or ascertain the remaining cash balance of the account. Respondent further asserted that Claimants continue to overstate their damages because they have failed to account for their unsolicited trading and according to their holding page and the confirmations generated, Respondent Jacqueline Strauss Knoll only recommended seven purchases to the Claimants whereby the net realized loss in the account was \$419.12, thus Claimants damage calculation is without merit and should be excluded.

RELIEF REQUESTED

Claimants Ann G. and Russell Swanson requested \$8,006.64 in actual damages together with reasonable interest and any applicable penalties.

Respondents Merrill Lynch, Pierce, Fenner and Smith, Inc. and Jacqueline Strauss Knoll requested the claim be dismissed and costs be assessed against the Claimants.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Roger Brandwein, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on March 29, 1993 and by the Respondents on June 1, 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. Respondents' Motion to Compel the Production of Documents is denied.
2. Claimants' Motion to Compel the Production of Documents is denied.
3. Respondents Merrill Lynch, Pierce, Fenner and Smith, Inc. and Jacqueline Strauss Knoll are jointly and severally liable and shall pay to the Claimants Ann G. and Russell Swanson the sum of \$7,939.00 in damages.
4. The Claimants' request for interest is denied.
5. The parties shall bear their respective costs.
6. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Ann G. and Russell Swanson shall be retained by the NASD, Inc. Respondents Merrill Lynch, Pierce, Fenner and Smith, Inc. and Jacqueline Strauss Knoll are jointly and severally liable and shall pay to the Claimants the sum of \$150.00, as reimbursement.

AFFIRMATION OF ATTORNEY

I, ROGER BRANDWEIN, 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. *and affirm the same to be true under penalties of perjury.*

Roger Brandwein
Roger Brandwein
Attorney and Counselor at Law

DATE OF DECISION: August 31, 1993

STATE OF:

ss:

COUNTY OF:

On this _____ day of _____ 19____, before me personally appeared Roger Brandwein to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.
