

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Norman E. Peterson

and

93-01330

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.
Thomas E. Gregory

REPRESENTATION OF PARTIES

Norman E. Peterson ("**Claimant**") was represented by John L. Conklin, Esq., Tilly & Graves, Denver, Colorado.

Merrill Lynch Pierce Fenner & Smith, Inc. ("**Respondent Merrill Lynch**") and Thomas E. Gregory ("**Respondent Gregory**") were represented by John Kilkenny, Esq., Merrill Lynch Pierce Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about April 2, 1993. Submission Agreement of Claimant Norman E. Peterson was signed on April 30, 1993

Statement of Answer was filed by Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Thomas E. Gregory on or about December 22, 1994. Submission Agreement of Respondent Merrill Lynch Pierce Fenner & Smith, Inc. was signed on December 21, 1994 by John R. Cummings. Submission Agreement of Respondent Thomas E. Gregory was signed on December 22, 1994.

HEARING INFORMATION

The hearing was held on Wednesday, July 12, 1995 for two (2) sessions and Thursday, July 13, 1995 for two (2) sessions in Denver, Colorado for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that Respondent Gregory recommended unsuitable investments in Oxford Tax Exempt Fund Limited Partnership and SCA Tax Exempt Fund Series I. Claimant also alleged that Respondent Gregory made misrepresentations with respect to these investments. The claims asserted against Respondent Gregory include breach of fiduciary duty and negligent misrepresentation and a claim of fraud is asserted against Respondent Merrill Lynch and Respondent Gregory. The Claimant alleged that Respondent Merrill Lynch actively misrepresented the actual value of the funds on his monthly account statements since the date of purchase up through and including the November, 1991 account statement.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimant was a seasoned investor prior to opening his account with Respondent Merrill Lynch. It was also stated that the Claimant had received the Prospectus for each of the investments complained of in this matter after fully discussing the investment with Respondent Gregory. With respect to the allegation that Respondent Merrill Lynch misrepresented the value of the investments, Respondents stated that beginning in March, 1985 and for nine months thereafter, the monthly account statements stated that the pricing of limited partnership interests on monthly statements represented the purchase price and not the current value. Affirmative defenses including but not limited to the following were asserted by Respondents: the claims are barred under §15 of the NASD Code of Arbitration Procedure and the applicable statutes of limitation; and the claims are barred by the doctrines of authorization, ratification, and acquiescence.

RELIEF REQUESTED

Claimant requested an award in the amount of \$170,000 in compensatory damages and exemplary damages in the amount of \$170,000 against Respondent Gregory and \$1,700,000 against Respondent Merrill Lynch.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Merrill Lynch and Gregory asserted a Motion to Dismiss under §§12(d) and 15 of the NASD Code of Arbitration Procedure. After considering the written submissions and oral arguments presented on behalf of the parties, the arbitration panel **denied** the motion.

The parties have agreed that a handwritten, signed Award may be entered. 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter shall be and hereby are dismissed and denied.
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were four (4) sessions x \$750 = \$3,000 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$1,050 previously deposited with the NASD by the Claimant Norman E. Peterson. Claimant Norman E. Peterson shall be and hereby is liable for and shall pay to the NASD the sum of \$450 and Respondent Merrill Lynch Pierce Fenner & Smith, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$1,500 as the balance due for forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ Thaddeus J. Tecza, PhD

Thaddeus J. Tecza, PhD.

Public Arbitrator, Presiding Chair

August 1, 1995

/s/ Malcolm T. Cleland

Malcolm T. Cleland

Public Arbitrator

August 2, 1995

/s/ Donald P. Loyd, Esq.

Donald P. Loyd, Esq.

Industry Arbitrator

August 1, 1995