

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Edward A. Mendell  
Nancy L. Mendell

NASD Arbitration  
No. 93-01585

Name of Respondent(s)

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
William B. McCann  
Michael W. Bozora

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REPRESENTATION

For Claimants: Reed H. Bement, Esq., Reed H. Bement, Inc., San Francisco, California

For Respondents: Michael E. Olney, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York

CASE INFORMATION

Statement of Claim filed: April 14, 1993

Claimants' Submission Agreement signed: April 6, 1993

Joint Statement of Answer filed by Respondents: July 28, 1993

Respondents' Submission Agreements signed as follows:

Merrill Lynch, Pierce, Fenner & Smith, Inc.: July 28, 1993

William B. McCann: October 19, 1993

Michael W. Bozora: October 29, 1993

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): February 24, 1994 (two sessions)  
February 25, 1994 (two sessions)

Hearing Location: San Francisco, California

### CASE SUMMARY

Claimants alleged that the MFS Lifetime Government Income Fund investment recommended by Respondents was inappropriate and unsuitable for Claimants in that it involved a high degree of risk, jeopardized principal for the sake of immediate income, was not a fund which had as an objective the preservation of capital, had expense ratios which were amongst the highest in the industry, involved the payment of a high commission to Merrill Lynch, of 4% or more of the amount invested and that Claimants' investment resulted in a lack of diversification. Claimant further alleged that Respondents violated Sections 1, 2, 18, and 27 of Article III of the National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice and breached the duties they owed Claimants under California law.

Respondents denied Claimants' allegations of violating Sections 1, 2, 18 and 27 of the NASD Rules of Fair Practice, breach of fiduciary duty, unsuitable trading, or any other wrongdoing alleged by Claimants and alleged that Claimants received a copy of the prospectus, were advised of the risks and investment objectives associated with the fund. Respondents also asserted affirmative defenses.

### RELIEF REQUESTED

Claimants requested compensatory damages of \$65,000.00, or according to proof, plus interest thereon at 10% per annum from July 1, 1992, or other appropriate date, to the date of any award rendered by the arbitrators. Claimant also requested punitive damages as determined by the arbitrators, and an amount representing reasonable attorney's fees.

Respondents requested dismissal of Claimants' claims and such other and further relief deemed just and proper.

### OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 originals remain 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. All claims by Claimants, including the claim for punitive damages are dismissed.

2. The parties shall each bear their respective costs, including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$500.00 hearing session deposit previously deposited by the Claimants. Forum fees are assessed against:

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., solely, in the amount of \$2,000.00, calculated as follows: Four hearing sessions times \$500.00/session.

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

#### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Walter P. Hitchcock, Esq.	Public Arbitrator
A. Bruce McKenzie	Public Arbitrator
Robin Lynn Berry	Industry Arbitrator

#### Concurring Arbitrators' Signatures

  
Walter P. Hitchcock, Esq.

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A. Bruce McKenzie

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Robin Lynn Berry

Date of Decision: 2/25/94

Date Served: 03/22/94