

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Sylvia Kuczek

93-01639

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Joseph Beerbower

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 26, 1993, Claimant Sylvia Kuczek, who appeared Pro Se, alleged that on October 18, 1991 Respondent Joseph Beerbower, of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., acting in the long-standing capacity of financial consultant for both her Cash Management Account and IRA Account solicited her at work to purchase 500 shares of National Medical Enterprises ("NME") by informing her that the stock was selling at its current price because there had recently been some "bad news", but that there was money to be made in this company, at which time, Claimant had no reason not to trust him and she approved the transaction because she believed Respondent Joseph Beerbower knew her financial situation and investment objectives enough so that she could trust his judgement. Claimant further alleged that it was not until she picked up the November 4, 1991 issue of Newsweek that she learned what the "bad news" of NME really was, whereby there was serious legal entanglements of NME, stemming from their illegal, unethical and fraudulent business practices and resulting in major lawsuits by former patients and insurance companies. Claimant contended that she called Respondent Joseph Beerbower to question the advisability of buying a stock for an IRA, at which time, Respondent Joseph Beerbower said, "I told you that there was bad news, but that's all been discounted". Claimant further contended that this stock continues to drop and just recently the Wall Street Journal published a lengthy article that cites the deepening problems of NME. Claimant asserted that Respondent Joseph Beerbower withheld information and eluded his responsibility to divulge the pertinent data needed to make a prudent investment decision, in addition to Respondent's Merrill Lynch, Pierce, Fenner & Smith, Inc. failure to supervise, caused her to sustain losses.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Joseph Beerbower, by and through their in-house counsel Christopher D. Cavuoti, Esq., maintained that in April, 1987 Claimant Sylvia Kuczek opened an IRA account through Respondent Joseph Beerbower and the investment objectives selected by Claimant were income and price appreciation whereby prior to Claimant's purchase of National Medical Enterprises stock ("NME"), Respondent Joseph Beerbower recommended mutual fund investments based on their professional management and reduced risk through portfolio diversification. Respondents further maintained that Claimant informed Respondent Joseph Beerbower that she wanted to invest in individual stocks rather than mutual funds which provided slower growth, at which time, Respondent Joseph Beerbower advised Claimant that selecting individual stocks involved more risk than mutual funds whereby Claimant had purchased securities of similar quality prior to the investment at issue. Respondents contended that Claimant authorized the purchase of 500 shares of NME stock whereby Respondent Joseph Beerbower had informed Claimant that the reason for the price weakness of the stock was that NME was under investigation by the State of Texas involving the operations of their psychiatric hospital units; however, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. earnings estimates and forecasts made NME stock a good value, at which time, Respondent Joseph Beerbower explained to Claimant that the "bad news" involving the investigation appeared to have been discounted in the market price of the stock. Respondents further contended that they properly informed Claimant regarding her investment in NME stock and that a stock declining in value after a purchase is not grounds for a cause of action, thus the claim should be dismissed. Respondents asserted that Claimant had previously addressed a complaint to the NASD regarding her purchase of NME and the NASD investigated this matter, and found no action was warranted regarding the activities of Respondents.

RELIEF REQUESTED

Claimant Sylvia Kuczek requested the sum of \$8,913.00 plus return of commissions charged and reimbursement of the NASD filing fee.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Joseph Beerbower requested the claim be denied.

AWARD

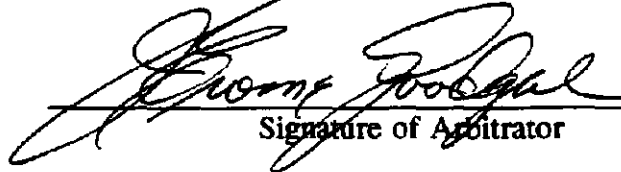
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jerome Goodgal, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 20, 1993, by Merrill Lynch, Pierce, Fenner & Smith, Inc. on July 15, 1993, and not by the Respondent Joseph Beerbower 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 claim of Claimant Sylvia Kuczek against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Joseph Beerbower is 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 Claimant Sylvia Kuczek shall be retained by the NASD, Inc.

AFFIRMATION

I, **JEROME GOODGAL**, 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.



Signature of Arbitrator

DATE OF DECISION: October 29, 1993

STATE OF: NY

COUNTY OF: NY

SS:

On this 26 day of October, 1993, before me personally appeared Jerome Goodgal 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.



MARK Q. GLUT
Notary Public, State of New York
No. 4006183
Qualified in Queens County
Commission Expires April 20, 1994