

**NATIONAL ASSOCIATION OF SECURITIES DEALERS
AWARD**

In the Matter of the Arbitration Between

GERTRUDE SIE, GERTRUDE SIE, TRUSTEE,
GERTRUDE SIE LIVING TRUST;
WILLY DE BOER, and WILLY DE BOER,
TRUSTEE, WILLY DE BOER LIVING TRUST,

Claimants,

v.

NASD No. 93-1665

MERRILL LYNCH PIERCE FENNER & SMITH,
INC., and ASHBY JONES.

Respondents.

Representation

For Claimants: Jeff. Ferentz, Esq., Keith Hollis, Esq. and Richard Nervig, Esq. of
Greenbaum & Ferentz, Newport Beach, CA

For Respondents: Charles Henderson, Esq., of Merrill Lynch Pierce Fenner & Smith. New
York, N.Y.

Case Information

Statement of Claim filed: April 21, 1993

Claimant's Submission Agreement signed: April 21, 1993

Statement of Answer filed on: July 16, 1993

Respondent's Submission Agreement signed on: Merrill Lynch Pierce Fenner & Smith on
September 29, 1993 and Ashby Jones on September 30, 1993.

Hearing Information

Prehearing Conference Date(s)/Sessions: None.

Hearing Date/Sessions: June 15, 1994/two

Hearing Location: Los Angeles, CA

Case Summary

Claimants alleged:

Lack of suitability, breach of fiduciary duty, and misrepresentations and omissions in the purchase of Merrill Lynch Adjustable Rate Fund (hereinafter, MLAR). Claimants are sisters and on June 7, 1991, received a telephone call from respondent Ashby Jones (hereinafter "Jones") of respondent Merrill Lynch Pierce Fenner & Smith (MLPFS) recommending they switch from long term treasury bonds into the MLAR. Jones advised claimants that the income from MLAR would be similar to that of their treasury bonds. In September of 1991, upon receipt of their monthly statement, they were informed that MLAR was not yielding an amount similar to the treasury bonds; the yield had in fact been reduced by one-third.

Respondents Jones and MLPFS were aware of claimants' stated objectives of preservation of capital and that the investment represented their life savings.

Respondents denied each and every allegation of wrongdoing in the Statement of Claim and alleged:

Claimant Gertrude Sie (hereinafter, Sie) had an individual account with MLPFS in 1991. She discussed with Jones the impact of interest rates on her U.S. Treasury bond and asked him to keep her advised of any potential outlook changes in interest rates. They discussed her investments from 1989 through 1991.

In 1991, Sie and Jones discussed the potential for rising interest rates and its effect on her principal and the possibility of investing in MLAR. Jones advised her that income from MLAR could fluctuate and the income would not be the same as from her Treasury bond. She was sent a copy of the prospectus.

Relief Requested

Claimant requested:

1. Compensatory damages for Gertrude Sie of \$20,000 plus interest, amended at

hearing to \$23,150.83;

2. Compensatory damages for Willy De Boer of 11,261, amended at hearing to \$3,319.42;

3. Interest at the highest legal rate;

4. Punitive damages of \$65,000;

5. Costs;

6. Attorney's fees; and

7. Such further relief as deemed proper.

Other Issues Considered and Decided

The parties have agreed that the Award in this matter may be executed in 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. Respondents are jointly and severally liable for and shall pay claimant Gertrude Sie the sum of \$3,438.85;

2. Respondents are jointly and severally liable for and shall pay claimant Willy deBoer the sum of \$2,136.76;

3. All other claims, including the claim for punitive damages, are dismissed;

4. The parties shall each bear their respective attorney's fees;

5. The parties shall each bear their respective costs.

Other Costs

None.

Forum Fees

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc., shall refund the \$500 hearing session deposit previously paid by the claimant. Forum fees are assessed against:

Respondents, jointly and severally, for \$1,000.


calculated as follows: two hearing sessions at \$500/hearing session, equals \$1,000.

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

Arbitration Panel

<i>Name</i>	<i>Public/Industry</i>
Diana Davis	Public
Charles Behm	Public
Charles Christiansen	Industry

Concurring Arbitrators' Signatures



Diana Davis

Charles Behm

Charles Christiansen

Date of Decision: