

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Antoinette Apicella

93-01789

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Edward Francis Sheil

CASE SUMMARY

In a claim with the National Association of Securities Dealers, Inc. on May 4, 1993, Claimant Antoinette Apicella, who appeared Pro Se, alleged that she contacted Respondent Edward F. Sheil, an employee of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., for advice and guidance in starting an investment portfolio for her retirement. Claimant further alleged that she informed Mr. Sheil that she was a novice investor, and that she was depending on his expertise to guide her. Claimant contended that she informed Mr. Sheil that she wanted an investment which would provide safety and no income, an investment which would be there when she retired in twenty or so years. Claimant alleged that Respondent Edward Sheil sold her limited partnerships such as Merrill Lynch Partnership II, ML Media Opportunity Partnership, Equity Capital & Lomas & Nettleton Mtg. Inc., which were risky and illiquid and unsuitable for her investment needs. The Claimant contended that the value of the shares in the limited partnerships declined, causing her damages for which the Respondents should be held liable.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edward Francis Sheil, by and through their in-house counsel, Christopher D. Cavuoti, Esq., New York, NY, maintained that the Claimant opened accounts with Merrill Lynch, Pierce, Fenner & Smith, Inc., and that her stated investment objective was for long term growth. The Respondents further maintained that the Claimant stated that she was willing to accept above average risk to achieve her investment objective, and that she would accept income investments as well as growth investments to attain her objective. The Respondents further maintained that the Claimant was provided with prospectuses for these investments which contained detailed information regarding the risks and benefits of the investments, and, therefore Claimant was aware of the risks. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edward Francis Sheil contended that they acted in a commercially reasonable manner, consistent with their obligations and responsibilities

toward Claimant, and that the Claimant knew and assumed the risk of any loss, and contended further that the investments were suitable for Claimant given her stated investment objective.

RELIEF REQUESTED

Claimant Antoinette Apicella requested an award for actual damages in the amount of \$10,000.00

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edward Frances Sheil requested that all claims of the Claimant be dismissed and that the costs of the proceeding be assessed against Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, George R. Freund, 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 28, 1993 and by the Respondents on July 3, 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 Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edward Frances Sheil are jointly and severally liable and shall pay to the Claimant Antoinette Apicella the sum of \$850.00 in actual damages.
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 shall be retained by the NASD, Inc. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edward Frances Sheil are liable and shall pay to the Claimant the amount of \$150.00, as reimbursement of the filing fee.

AFFIRMATION

I, **GEORGE R. FREUND**, 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: May 3, 1994

STATE OF: *N.J.*

SS:

COUNTY OF: *Union*

On this 29th day of April 1994, before me personally appeared **George R. Freund**, 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.

