

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Peter A. Spoehr

93-01878

Name of Respondent

Merrill Lynch Pierce Fenner & Smith, Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 11, 1993, Claimant Peter A. Spoehr, who appeared Pro Se, alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its registered representative, recommended an unsuitable investment, Westin Hotel Partnership, and that he sell his existing Municipal Investment Trusts in order to purchase this one. The Claimant further alleged that due to a need for more of a secure income than the one provided by the Respondent, he transferred his account to another firm, but was unable to transfer the Westin Hotel Partnership. The Claimant contended that in December of 1991 his statement indicated that the market value of his security was \$0, when prior to this statement, he was led to believe it was worth \$8,000.00. Claimant Peter A. Spoehr contended further that this investment was inappropriate, unsuitable and now jeopardizes his retirement security, and that due to the disregard of his investment objectives, and the wrongdoing of the Respondent, it should be held liable for the losses he has incurred.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its in-house counsel, Elizabeth Armstrong, Esq., maintained that its broker described the features of the partnership in detail, including the risks associated with this type of investment, and in addition, the Claimant was provided with a prospectus describing the risks associated with investment in partnership. The Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. further maintained that the Claimant directed, approved and authorized each and every transaction in his account, and that it should not be held liable in this matter.

In a response to the Statement of Answer, Claimant Peter A. Spoehr refuted the defenses of the Respondent and stated that it ignored his interests in favor of their own, and that he was persuaded to sell good investments to be sold inappropriate and unsuitable ones.

**RELIEF REQUESTED**

Claimant Peter A. Spoehr requested \$8,000.00 in actual damages.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested that the claims of the Claimant be dismissed.

**OTHER ISSUES CONSIDERED & DECIDED**

The Section 15 Motion to Dismiss filed by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. for the presiding arbitrator's consideration is denied.

**AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, David Muschler, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 7, 1993 and by the Respondent on August 6, 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. The claims of the Claimant Peter A. Spoehr against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. are dismissed in their entirety.
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.

**AFFIRMATION**

I, **DAVID MUSCHLER, ESQ.**, 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.

A handwritten signature in cursive script, appearing to read "David Muschler", is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: January 3, 1994