

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mary B. White

Case No.93-02278

Name of Respondents

Merrill Lynch Pierce Fenner & Smith Inc
William Wood Haynes

REPRESENTATION

For Claimant, Mary B. White, ("White"): William Ponsoldt, Esq. of Kohl, Metzger, Spotts, P.A., Stuart, Florida.

For Respondents, Merrill Lynch ("MLPFS") and William Wood Haynes ("Haynes"): Glenn D. Kelley, Esq. of Kelley, Aldrich & Warren, P.A., West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed: June 7, 1993. Claimant's Submission Agreement signed: June 2, 1993.

Respondents' Joint Statement of Answer filed: September 22, 1993. Respondents' Submission Agreements signed: September 27, 1993 by Haynes, and September 8, 1993 by John R. Cummings, First Vice President on behalf of MLPFS.

HEARING INFORMATION

On March 28 and 29, 1995, in Fort Lauderdale, Florida a hearing lasting 4 sessions was conducted.

CASE SUMMARY

Claimant alleged that she was an unsophisticated investor whose assets were previously managed by a bank trust department in very conservative investments; that White advised Respondents, through Haynes, that she was risk adverse, that she was taught to avoid bank stocks and limited partnerships, and that her goal was to provide for retirement with maximum safety and income;

that Respondents advised Claimant, through Haynes, that she could comfortably retire in 5 to 7 years with his guidance; that Respondents persuaded White to purchase 2 highly illiquid, totally unsuitable limited partnerships and bank stocks; that the value of all three investments is zero and Claimant has been damaged; and, that Respondents' actions constituted misrepresentations and omissions, breach of fiduciary duty, inadequate supervision, breach of contract and violation of Section 10(b) of the Exchange Act, 1934.

Respondents denied all allegations of wrongdoing and alleged that certain claims were not eligible for arbitration pursuant to Section 15; that White did not advise Respondents to avoid limited partnerships or bank stock; that Claimant advised Respondents that her goals were income and intermediate long term growth; that Haynes fully explained each investment; that the investments were suitable and were made with White's authorization; and that White "cherry picked" 4 investments from her full portfolio to complain about after never previously complaining to Respondents about any investment.

Respondents alleged the affirmative defenses of Statute of Limitations and Repose; attorneys' fees demand not supported by law; punitive damages unavailable; and, New York choice of law.

RELIEF REQUESTED

Claimant requested damages in the amount of \$21,938.00, costs, interest and attorney's fees, punitive damages, and other relief.

Respondents requested dismissal and costs.

OTHER ISSUES CONSIDERED & 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. Respondent Haynes is found not liable and, therefore, all claims against him are hereby dismissed.
2. Respondent MLPFS is found liable and shall pay to the Claimant the amount of \$3,469.50.
3. Claimant's requests for interest, costs, attorney's fees and punitive damages are denied.

OTHER COSTS

None.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,600.00 (4 sessions x \$400.00).
2. Respondent, MLPFS is hereby assessed \$1,600.00, \$80.00 of which shall be paid directly to the Claimant, and \$1520.00 of which shall be paid to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$120.00 paid by the Claimant.
4. The NASD shall retain the session deposit of \$80.00 paid by the Claimant, which shall be reimbursed as set forth above, and the postponement fee of \$200.00 (one-half of the \$400.00 postponement fee, as agreed by the parties).
5. Respondents, MLPFS, shall pay the \$200.00 postponement fee (one-half of the \$400.00 fee, as agreed by the parties).

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

Concurring Arbitrators' Signatures

15/
Monica I. Salis, Esq.

Public

15/
Bruce G. Murphy, Esq.

Public

15/
Richard D. Hanson

Industry

Date of Decision: 6/22/95