

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Madeline A. Page

vs.

Case #  
93-02588

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

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**REPRESENTATION**

For Claimant, Madelin A. Page ("Claimant"), Robert W. Page, Jr., located in San Francisco, California.

For Respondent, Merrill Lynch Pierce Fenner & Smith ("Respondent"), Michael E. Olney, Esq., in-house counsel, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on June 30, 1993.

Claimant's Submission Agreement was signed on June 28, 1993.

Respondent's Statement of Answer was filed on October 4, 1993.

Respondent's Submission Agreement was signed on October 1, 1993.

**HEARING INFORMATION**

Hearing Date/Sessions: April 7, 1994 - 2 sessions

Hearing Location: NASD offices located in Boston, Massachusetts.

**CASE SUMMARY**

Claimant alleges that in 1984 she and her husband opened a cash management account at Respondent's firm with utility stocks valued at \$222,739. Claimant alleges that up until that time, her husband was able to make investment decisions but due to symptoms of Alzheimer

disease, his capacity to manage his account was reduced. Claimant also alleges that she and her husband informed Respondent that their investment objective was income and preservation of capital and that they had to minimize the risk because of their ages, seventy and seventy eight, respectively.

Claimant further alleges that Respondent sold their Pacific Gas and Electric holdings and purchased 30 units of MLH Income Realty Partnership V and also purchased Lifetime Government Income Plus Trust ("LGIP").

Claimant contends that the purchase of the two investments were inconsistent with their investment objective, which was preservation of capital. Claimant also contends that Respondent misrepresented the value of MLH and that it was not until August, 1992 when she sold the investment to pay for nursing home expenses for her husband that she realized that MLH was valued at \$12,895 and not \$23,370 as Respondent represented.

Respondent asserts nineteen affirmative defenses and denies all allegations of unsuitable trading, negligent misrepresentation, fraud or any other basis of liability set forth in the Statement of Claim. Respondent maintains that Claimant and her husband informed their broker that they wanted to invest in securities to secure intermediate term price appreciation as well as current income, and that they were willing to take either investment grade or somewhat lower quality securities. Respondent also maintains that Claimant and her husband indicated their net worth at one quarter of a million dollars and their annual household income was approximately \$29,000.00.

Respondent contends that Claimant received total cash distributions on MLH including escrow interest, of \$12,134.21 before it was sold so that the net loss was only \$4,978.49. Respondent also contends that the Claimant received dividends including interest income as well as partial return of principal totaling \$28,018.01 on LGIP Trust open-end mutual fund before it was sold.

#### **RELIEF REQUESTED**

Claimant requests an award of \$36,000 in compensatory damages and \$25,000 in punitive damages.

Respondent requests that all claims be denied.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimant against Respondent are denied in their entirety.

**FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed as follows:

Non-refundable Filing Fee: \$150.00.

Hearing Session Fees: \$500.00 x 2 sessions = \$1,000.00

Total Fees: \$1,150.00

1. Claimant is assessed a \$150.00 non-refundable filing fee.
2. Claimant is further assessed \$500.00 hearing session fees. Claimant previously paid \$650.00 which shall be credited to the amount assessed.
3. Respondent is assessed \$500.00 hearing session fees.

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

**ARBITRATION PANEL**

Peter J. Dale, Esq.	-	Public Chairperson
Richard A. Cournoyer	-	Public Panelist
Linda J. Gorham	-	Industry Panelist

Concurring Arbitrator's Signature

  
Peter J. Dale, Esq.

Date of Decision: May 25, 1994

1. All claims by Claimant against Respondent are denied in their entirety.

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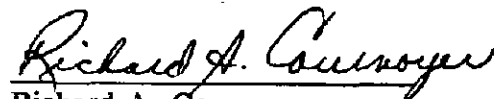
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Richard A. Cournoyer	-	Public Panelist
Linda J. Gorham	-	Industry Panelist

Concurring Arbitrator's Signature

  
Richard A. Cournoyer

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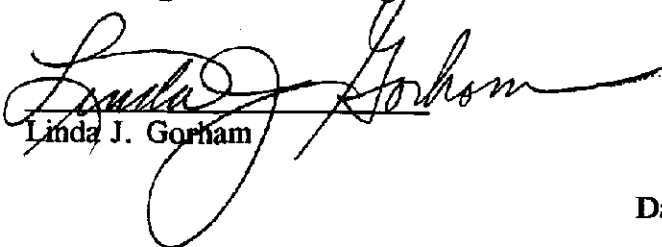
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Richard A. Cournoyer	-	Public Panelist
Linda J. Gorham	-	Industry Panelist

Concurring Arbitrator's Signature

  
Linda J. Gorham

Date of Decision: June 2, 1994