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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

H. H. Bonner

93-02650

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith Inc

REPRESENTATION

For Claimant: Kirk M. McAlpin, Jr., Esq. of McAlpin Henson & Kearns of Atlanta, GA.

For Respondent: V. James Mann, Esq., Vice President and Divisional Litigation Counsel - Eastern Division, Merrill Lynch Pierce Fenner & Smith Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed: July 2, 1993.

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

Statement of Answer filed by Respondent, Merrill Lynch Pierce Fenner & Smith Inc. on: September 24, 1993.

Respondent, Merrill Lynch Pierce Fenner & Smith Inc.'s Submission Agreement signed on: September 24, 1993.

HEARING INFORMATION

Hearing Date/Sessions: August 24, 1994 / Two Sessions.

Hearing Location: National Association of Securities Dealers, Inc. offices located in Atlanta, GA.

9409048

CASE SUMMARY

Claimant alleged breach of contract, breach of fiduciary duties, common law fraud and deceit, and violations of federal and state securities laws.

Claimant alleged that he was an inexperienced investor and relied completely on Respondent's representative, George Frizzell's ("Frizzell") knowledge. Claimant alleged that Frizzell convinced Claimant to margin his account even though the account represented the bulk of the Claimant's retirement funds.

Claimant alleged that in 1987, Frizzell convinced Claimant to sell a portion of his securities in order to obtain financing for a \$75,000 personal loan to Mr. Frizzell. Claimant alleged that he agreed to loan Mr. Frizzell the money in exchange for a note for \$100,000 payable in five years at a rate of 12%. Claimant further alleged that the loan violated Frizzell's duties as a fiduciary of Respondent, Merrill Lynch Pierce Fenner & Smith Inc. Claimant further alleged that when he became uncomfortable with the arrangement and wanted to close his account at the beginning of 1989, Frizzell convinced Claimant that Claimant's money was best invested with Respondent and guaranteed to satisfy any and all losses in Claimant's account.

Claimant further alleged that in 1990 he requested that Frizzell purchase 1,000 shares of Med Stone. Claimant alleged that Frizzell bought 2,000 shares and due to a decline his account netted an \$18,000 loss. Claimant alleged Frizzell paid \$9,000 to Claimant but refused to pay the remainder because the loss occurred on Med Stone stock which Claimant had requested. Claimant further alleged that his relationship with Frizzell deteriorated and at the end of 1991, Claimant's account netted a \$38,000 loss.

Claimant further alleged that when he ended the broker-investor relationship in early 1992, approximately \$128,000 was outstanding on the note. Claimant alleged that negotiations with regard to settling the note were unsuccessful.

Claimant further alleged that Respondent recklessly and deliberately ignored their legal and professional standards of conduct.

Respondent maintained that it did not have any knowledge regarding the allegations of a personal loan between Claimant and Frizzell. Respondent further maintained that it never acted in any way which would lead a reasonable person to conclude Frizzell had the authority to negotiate or contract to borrow money for personal reasons. Respondent further maintained that it never actually held

9409048

Page 3
Award #93-02650

Frizzell out as having the authority to guarantee Claimant against losses in his account, or that it acted in any manner which would lead a reasonable person to conclude otherwise.

Respondent put forth several affirmative defenses. Respondent maintained that Claimant failed to state a claim upon which relief could be granted. Respondent further maintained that the claims were barred by the applicable statute of limitations and on the grounds of laches. Respondent maintained Claimant's losses were proximately caused by Claimant's own conduct or negligence, and that Claimant failed to mitigate his damages. Respondent further maintained that it adequately supervised and controlled its employees, at all times acted in good faith, and did not indirectly or directly induce any act(s) constituting a cause of action. Respondent maintained that Claimant approved and ratified all transactions. Respondent further maintained that there is no private right of action for an alleged violation of the rules of a self-regulatory organization. Respondent maintained that punitive damages are not recoverable under New York law. Lastly, Respondent maintained that under Section 7513 of the New York Civil Practice Law and Rules the arbitrators have no authority to award attorney's fees.

RELIEF REQUESTED

Claimant requested: damages from Merrill Lynch Pierce Fenner & Smith Inc. in the sum of \$250,000 for actual monetary damages, punitive damages in excess of \$10,000, cost and expenses including reasonable attorney's fees plus interest at 12% "post judgement rate."

Respondent requested: that the Statement of Claim be dismissed and that costs be assessed against the Claimant.

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:

The arbitrators decided in favor of the Respondent and all claims by the Claimant against the Respondent are denied.

The Claimant's claim for punitive damages is denied.

Each party shall bear their respective costs including attorneys fees.

Page 4
Award #93-02650

9409048

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.


2 sessions X \$750 = \$1500 minus hearing session deposit of \$750 = net \$750 due.

Forum Fees Assessed Against:

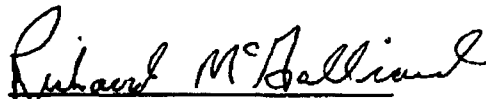
The Claimant be and hereby is liable and shall pay to the NASD the sum of \$375.00 representing forum fees and the Respondent Merrill Lynch Pierce Fenner and Smith, Inc. be and hereby is liable and shall pay to the NASD the sum of \$375.00 representing forum fees.

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

Concurring Arbitrators' Signatures
Name


Robert H. Putnam, Jr., Esq.
Public Arbitrator


Joseph Carlisi
Public Arbitrator


Richard MacGalliard
Industry Arbitrator

Date of Decision: September 22, 1994