



N.A.S.D. AWARD

Arbitration

National Association of Securities Dealers, Inc. • Suite 1100, Sun Bank Center, 515 E. Las Olas Blvd. • Fort Lauderdale, FL 33301-2268 • (305) 522-7391 FAX: (305) 522-7403

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Neal Blacker

Assistant Director of Arbitration

In the Matter of the Arbitration Between

Pamela M. Burdick, Esq.
Senior Staff Attorney

Name of Claimants

Leonard J. Levick, Beneficiary of the Leonard J.
Levick IRA and Leonard J. Levick and Myra F.
Levick Individually, and as Joint Tenants, with
Right of Survivorship

Case No. 93-02916

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Bernard J. Suwalski
Frederick Myers Scott, III

REPRESENTATION

For Claimants, Leonard J. Levick and Myra F. Levick ("Levick"): Jonathan L. Shepard, Esq. of Siegel & Lipman, Boca Raton, Florida.

For Respondent, Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), Bernard Suwalski ("Suwalski"), and Frederick Myers Scott, III, ("Scott"): Jonathan A. Schorr, Esq. of Merrill Lynch, Pierce, Fenner & Smith Inc.

CASE INFORMATION

Statement of Claim filed: July 26, 1993.

Claimant's Submission Agreement signed on: June 30, 1993.

Statement of Answer filed by Respondents, Merrill Lynch, Pierce, Fenner & Smith Inc., Bernard J. Suwalski, and Frederick M. Scott, III, on: September 27, 1993.

Respondent, Merrill Lynch, Pierce, Fenner & Smith Inc., Submission Agreement signed on: September 28, 1993.

Respondent, Bernard J. Suwalski's, Submission Agreement signed on: September 27, 1993.

Respondent, Frederick M. Scott's, III, Submission Agreement signed on: September 15, 1993.

HEARING INFORMATION

On October 28, 1994, a pre-hearing conference lasting one session was conducted via telephone call with an arbitrator.

On November 2, 3, 4, and December 14, 15, 1994 in Fort Lauderdale, Florida, hearings lasting 12 sessions were conducted.

CASE SUMMARY

Claimants opened an IRA account and a joint CMA account with Respondents. Claimants alleged that Respondents caused the Claimants' funds to be invested in investments which are unsuitable individually and collectively to Claimants' investment needs and objectives. Claimants also alleged that the use of margin in the CMA account was not suited to their financial requirements, was ill advised, and in breach of Respondents' duty of care owed to claimants.

Respondents denied all allegations of wrongdoing and alleged that: all recommendations made were suitable and Claimants were aware of all pertinent risks; all recommendations were consistent with Claimants' risk tolerances and investment objectives.

Respondents alleged the affirmative defenses of failure to state a claim, estoppel, ratification, self direction of trades, approval and authorization, statute of limitations, failure to mitigate damages, good faith, laches, market fluctuation, non-entitlement to punitive damages or attorney's fees.

RELIEF REQUESTED

Claimants requested damages in the amount of \$192,000, plus interest and costs, exemplary and punitive damages, and attorneys fees.

Respondents request dismissal of all claims and an award of their fees 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:

Respondents Merrill Lynch, Bernard Suwalski, and Fred M. Scott are found not liable and, therefore, all claims against them are hereby dismissed. Specifically as to Suwalski and Scott the panel request that their U-4 and U-5 be amended to reflect that "no evidence of wrongdoing was found."

Claimants requests for exemplary and punitive damages, costs, and attorneys fees are denied.

Respondents' requests for costs and fees are hereby denied.

OTHER COSTS

Other than as provided below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$12,300.00 (one pre-hearing conference x \$300.00 plus 12 hearing sessions x \$1,000.00).

Claimants are hereby assessed \$1,000.00 for which the NASD shall retain the \$1,000.00 previously deposited in full satisfaction thereof.

Respondent Merrill Lynch is hereby assessed \$11,300.00 payable to the National Association of Securities Dealers, Inc.

The NASD shall retain the non-refundable filing fee of \$250.00 paid by Claimants.

9502065

Concurring Arbitrators' Signatures
Name

Public/Industry

/s/
Mark C. Perry, Esq.

Public

/s/
Kathy Klock, Esq.

Industry

/s/
Gary C. Barat, CPA

Public

Date of Decision: February 2, 1995