

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Robert B. and Leitha C. Shearer

93-02996

Name of Respondent(s)

Merrill Lynch, Pierce, Fenner & Smith Inc
Morris R. Copeland
G. Thomas Stokes

REPRESENTATION

The Claimants appeared pro se.

For Respondents Merrill Lynch, Pierce, Fenner and Smith, Inc., Morris R. Copeland and G. Thomas Stokes: Gregory J. Giomelli, Esq. of the law firm of Rogers and Hardin, Atlanta, GA.

CASE INFORMATION

Statement of Claim filed: August 3, 1993.

Claimants' Submission Agreement signed on: July 27, 1993.

Joint Statement of Answer and Motion to Dismiss filed by Respondents Merrill Lynch, Pierce, Fenner and Smith, Inc., Morris R. Copeland and G. Thomas Stokes on: March 18, 1994.

Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc.'s Submission Agreement signed on: March 18, 1994.

Respondent Morris R. Copeland's Submission Agreement signed on: April 20, 1994.

Respondent G. Thomas Stokes' Submission Agreement signed on: April 20, 1994.

HEARING INFORMATION

Hearing Date/Session: October 20, 1994 / Two Sessions

Hearing Location: Swissotel, 3391 Peachtree Road, N.E., Atlanta, GA.

CASE SUMMARY

Claimants alleged that the Respondents made misrepresentations to them and recommended that they purchase shares of stock in Ames Department Store ("Ames"). Claimants further alleged the store filed for protection under the bankruptcy laws two weeks after Respondents sold it to the Claimants and this was an unsuitable risk for Claimants which they were not informed of and they were not given an opportunity to look at a prospectus. Claimants further alleged they did not have ample funds in the Merrill Lynch, Pierce, Fenner and Smith, Inc. account and the purchase caused them to have a \$1,113.00 debit balance which Merrill Lynch, Pierce, Fenner and Smith, Inc. charged interest on and the Claimants were not in a cash position to make purchases. Claimants further alleged they met with Respondent Morris R. Copeland, Respondent G. Thomas Stokes' supervisor, who admitted the advice given to the Claimants was the best available at the time from all sources including Standard and Poors but later turned bad and Respondent Copeland stated further he could not do anything for the Claimants.

Respondents maintained Mr. Stokes discussed the investment in Ames with the Claimants prior to their purchase and mentioned the research comments on Ames. Respondents further maintained the result that Ames sought protection under the U.S. Bankruptcy laws could not have been predicted and it was Claimants' decision to maintain their position in Ames and not sell their position to reduce or mitigate their loss after being advised by Respondent G. Thomas Stokes to consider that option. Respondents further maintained the Claimants met with Mr. Morris R. Copeland and never once at the meeting did Claimants indicate that they believed the Ames' recommendation to be unsuitable or outside their investment objectives and the fact that Claimants have realized losses on a stock recommendation does not give rise to a cause of action for damages. Respondents further maintained they acted in a commercially reasonable manner, consistent with their obligations and responsibilities toward Claimants, and the Claimants were aware of and assumed the risk of market fluctuation of the investment and the Claimants expressly ordered, approved and ratified the acts and transactions complained of.

Respondents made a motion to dismiss Respondent Morris R. Copeland as his role as a manager was ministerial and he only became involved with Claimants when they brought their concerns over Respondent G. Thomas Stokes' handling of their account to his attention and there has been no factual allegation of wrongdoing made against Mr. Copeland.

RELIEF REQUESTED

Claimants requested a \$10,000.00 settlement to relieve their \$11,592.00 loss.

Respondents requested that Claimants' claim for damages be denied in all respects and that the costs of the proceeding be assessed against the Claimants.

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. There presently is a class action suit involving Ames and the Claimants are members of the class by their failure to timely opt out of the class action suit. Therefore, the Claimants are barred from also seeking recovery in arbitration.

FORUM FEES


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

2 sessions x \$200.00 = \$400.00 less Claimants' hearing session
deposit (\$200.00) = net \$200.00 due.

The Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. be and hereby is liable and shall pay to the NASD the sum of \$200.00 representing the balance of the forum fees.

Page 4
Award #93-02996

ARBITRATOR SIGNATURE


James E. Giblin, Esq.
Public Arbitrator

Date of Decision: December 28, 1994

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