

## **NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Stephen Schilson, and  
B. Eugene Schneider,  
Claimants/Counterrespondents,

v.

No. 93-03104

Merrill Lynch, Pierce, Fenner & Smith, Inc.,  
Respondent/Counterclaimant.

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### **REPRESENTATION OF PARTIES**

Stephen Schilson ("**Schilson**") and B. Eugene Schneider ("**Schneider**") (collectively referred to as "**Claimants**") were represented by H. Todd Iveson, Esq., of Dankenbring, Greiman, Osterholt & Hoffmann, St. Louis, Missouri.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("**Respondent**") was represented by Michael J. Fortunato, Esq., of rubin & Associates, Paoli, Pennsylvania.

### **CASE INFORMATION**

Claimants' Statement of Claim was filed on or about August 9, 1993. Claimants' Submission Agreements were signed on August 5, 1993. Claimants' Amended Statement of Claim was filed on or about May 2, 1994.

Respondent's Answer and Counterclaim to claimants' Amended Statement of claim was filed on or about July 7, 1995. Respondent's Submission Agreement was signed on July 7, 1995.

### **HEARING INFORMATION**

A telephonic pre-hearing conference was held on February 16, 1996 for a total of one (1) session.

The hearing was held on February 27, 1996 in St. Louis, Missouri for a total of two (2) sessions.

### **CASE SUMMARY**

Claimant alleged that: Respondent encouraged its brokers to refer securities clients to a new commodities program assuring the brokers that Respondent had the personnel and expertise to trade commodities; brokers were promised 25% of all commissions earned on commodities trades executed by Respondent on behalf of their securities clients; pursuant to Respondent's assurances, they transferred clients, the Wexbergs, who paid in excess of \$64,000 in gross commissions in connection to commodities trades; the commodities broker assigned to the Wexberg accounts committed numerous improprieties causing the Wexberg's to lose a substantial sum of money and

threatened to sue Respondent; pursuant to an agreement, the Wexbergs agreed to forgo litigation in exchange for a 30% discount on all securities transactions until all commodities losses were repaid; they were assured by the branch manager that the discount would not affect Claimants' compensation in any way; despite its assurances, Respondent reduced Claimants' payout on commissions from Wexberg securities trades by more than \$12,000; the reduction in payout was the only reason Schilson did not earn a production bonus in 1993; Respondent has attempted to deny Claimants' additional compensation to them which was earned prior to Claimants' leaving employment with Respondent; and the Wexbergs held several open options positions at the time Claimants changed firms, and Respondent delayed processing the transfer requests until the positions closed with Respondent keeping the resulting commissions.

Unless otherwise admitted therein, Respondent denied the allegations set forth in the Statement of Claim and Amended Statement of Claim. Respondent specifically stated that: upon resigning, Claimants misappropriated and converted Respondent's documents, and wrongfully solicited Respondent's clients to transfer their accounts to Claimants' new firm; in August of 1993, the parties entered into a settlement agreement ending respondent's lawsuit and Claimants' arbitration; for the next eight (8) months, the parties acted consistently with the settlement with the exception that claimants had failed to dismiss the arbitration they had commenced; it had never promised to give claimants 25% of the commissions earned on the Wexberg trades; it never promised claimants that they would not be affected by the Wexberg commission discount; it credited Schneider with \$1,000 in production credits for the Kissling loan; and it had fully complied with all applicable regulations in transferring the Wexberg accounts and at no time ever delayed transferring any Wexberg account to keep the commissions of subsequent transactions. Respondent also asserted a Counterclaim against Schneider for an alleged refusal to pay all of the money he owed to Respondent pursuant to the August 6, 1993 Settlement Agreement and Release between the parties in the amount of \$1,470.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$33,500, or such greater amount according to the proof at the hearing, interest on such amount at the rate of 9% from July 30, 1993, and such other relief as the panel deemed proper.

Respondent requested that the panel enter an award in Respondent's favor and deny each and every claim asserted by the Claimants in their Amended statement of Claim. Respondent further requested that the panel enter an award in favor of respondent and against Schneider on Respondent's Counterclaim in the amount of \$1,470, plus interest and costs.

### **OTHER ISSUES CONSIDERED & DECIDED**

Claimants filed a Motion for leave to File an Amended Statement of Claim. Respondent filed it's Response on or about June 3, 1994. After review of the motion and responses, the arbitrators granted Claimants' motion.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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:

All claim/Counterclaims/requests for relief are, and each of them, denied with prejudice.

Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration

### **FORUM FEES**

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each prehearing conference, if any. There were two (2) regular sessions x \$600 and one (1) pre-hearing session x \$300 = \$1,500 in forum fees. Pursuant to §44(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §44(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$250 and shall **retain** as forum fees the hearing session deposit in the amount of \$600 previously deposited with the NASD by the Claimants.

Pursuant to §44(c) of the Code, the NASD shall **retain** the non-refundable Counterclaim filing fee in the amount of \$500 and shall **retain** as forum fees the Counterclaim hearing session deposit in the amount of \$300 previously deposited with the NASD by the Respondent.

Additional forum fees in the amount of \$600 are assessed against the Respondent.

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

Dated:

Edwin R. Cohen  
Edwin R. Cohen  
Industry Arbitrator, Presiding Chair

s/s

March 26, 1996

Dale W. Roth  
Dale W. Roth  
Industry Arbitrator

s/s

March 27, 1996

Joan W. Fox  
Joan W. Fox  
Industry Arbitrator

s/s

March 27, 1996