

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Janet McKinney,
Claimant,

v.

No. 93-03311

Merrill Lynch, Pierce, Fenner
& Smith, Inc., and
James Roy Schellinger,
Respondents

REPRESENTATION OF PARTIES

For Claimant Janet McKinney ("Claimant"): Clark W. Mason, Esq., and , Esq., and Gary Barkett, Esq., of the Davidson Law Firm, LTD., Little Rock, Arkansas.

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and James Roy Schellinger ("Respondents"): Scott E. Daniel, Esq., of Hilburn, Calhoun, Harper, Pruniski & Calhoun, Ltd., North Little Rock, Arkansas.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about August 23, 1993.

Claimant's Submission Agreement was signed on July 14, 1993.

Respondents' joint Statement of Answer was filed on or about October 22, 1993.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.'s Submission Agreement was signed on October 21, 1994.

HEARING INFORMATION

Hearing dates: April 21, 1994. Two (2) sessions.
April 22, 1994. Two (2) sessions.

Hearing Location: Little Rock, Arkansas.

CASE SUMMARY

Claimant alleged that Respondents: Violated the Rules of Fair Practice of the NASD; made unsuitable and excessive trades in Claimant's account; breached their fiduciary duty to the Claimant; breached their contract with Claimant; omitted or misrepresented material facts concerning investments recommended to the Claimant; violated Ark. Code Ann. Section 23-42-106; and were negligent in recommending unsuitable transactions, and how those transactions changed the nature of Claimant's portfolio. Claimant also alleged that Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. had control person liability to the Claimant, as well as liability for violations of federal and Arkansas securities laws. The allegations arose out of transaction involving mutual funds and common stocks, and tax-free municipal bonds more fully disclosed and presented at the hearing.

In their joint Answer, Respondents jointly and individually denied each and every allegation of wrongdoing and liability set forth in and implied by the Statement of Claim. Respondents also asserted a Counterclaim on the basis that the claim filed by the Claimant was frivolous.

RELIEF REQUESTED

Claimant requested she have of and recover from the Respondents, jointly and severally, compensatory damages, attorneys' fees as set forth under Ark. Code Ann. Section 23-42-106, costs, pre-judgement and post-judgement interest, punitive damages as the proof may warrant, and all other legal and proper relief.

Respondents requested that the arbitrators dismiss in full the arbitration claim of Janet McKinney and assess all costs against her. Respondents also requested an award of \$25,000.00 in damages to reimburse them for the time and effort necessary to defend this action.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Schellinger did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the Code and having answered the claim, appeared and testified at the hearing, and therefore, is bound by the determination of the panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed by 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 original(s) remain on file with the NASD.

The record of this matter was closed on May 2, 1994.

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:

1. Claimant Janet McKinney's claims asserted against Respondent Merrill Lynch, Pierce Fenner & Smith, Inc. are, and each of them, denied and dismissed with prejudice.
2. Respondent James Roy Schellinger is liable for, and shall pay to the Claimant the sum of \$1,900.00 as satisfaction of her claims made herein.
3. Respondents' Counterclaim is denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth more fully below.

Respondent James Roy Schellinger is liable for, and shall pay to the Claimant, the sum of \$950.00 as satisfaction of her claim for costs made herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

4 hearing sessions x \$750.00 = \$3,000.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall RETAIN the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$2,250.00 are assessed against James Roy Schellinger.

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

CONCURRING ARBITRATORS

Dated:

Name:

June 8, 1994

W. Bradford Sherman/s/
W. Bradford Sherman
Presiding Chair
Public Arbitrator

May 27, 1994

Richard D. Bingham/s/
Richard D. Bingham
Industry Arbitrator

June 7, 1994

P. Drake Mann/s/
P. Drake Mann
Public Arbitrator

Date of Service by the NASD: 6-8-94