

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimant

Vita Jaffe Karpinos

93-03353

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

---

**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on August 26, 1993, Claimant Vita Jaffe Karpinos, through his Representative, Steve Goldberg, alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its Registered Representative, was negligent when it caused the Claimant to realize excessive capital gains due to her account being shifted into the CONSULTS Program. The Claimant further alleged that these gains were taken on stock that was sold off without her being notified for months, and alleged further that she is entitled to recover the amount she paid in capital gains taxes due to the wrongdoing of the Respondent.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its in-house counsel, Francis C. Musselman, Esq., maintained that although the Claimant was assessed approximately \$16,000.00 in capital gains taxes for 1992 for gains earned in her CONSULTS Account, this was due solely to Mr. Goldberg's decision to immediately liquidate almost 1/3 of the account. The Respondent contended that it properly executed his instructions while attempting to maintain a stable and diversified account for its customer, and that the Claimant did not suffer a pecuniary loss due to the Respondent; therefore, it should not be held liable.

In a reply to the Answer, the Claimant refuted the defenses of the Respondent and again requested relief for the damages suffered due to Capital gains taxes.

**RELIEF REQUESTED**

Claimant Vita Jaffe Karpinos requested \$10,000.00 in actual damages.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. requested that the claims of the Claimant be dismissed.

**AWARD**


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, William H. Malloy, Jr., Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on August 16, 1993 and by the Respondent on November 22, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to Claimant Vita Jaffe Karpinos \$5,300.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay \$75.00 to the Claimant as reimbursement of one-half of the filing fee.

**AFFIRMATION**

I, WILLIAM H. MALLOY, JR., ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
\_\_\_\_\_  
Signature of Arbitrator

DATE OF DECISION:

MAY 31, 1994