

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Susan Sedlak

93-03484

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.;  
Peter L. Colletti

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**REPRESENTATION**

For Claimant: Susan Sedlak ("Sedlak") was represented by Bruce R. Nichols, Esq. and Robert L. Hindelang, Esq. of Nichols & Long, P.C., located in Grosse Pointe, Michigan.

For Respondents: Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Peter L. Colletti ("Colletti") were represented by Clarence L. Pozza, Jr. of Miller, Canfield, Paddock and Stone, located in Detroit, Michigan.

**CASE INFORMATION**

Statement of Claim filed: September 7, 1993.

Claimant's Submission Agreement signed on: August 17, 1993.

Statement of Answer filed by Respondents on: December 15, 1993.

Respondent Merrill Lynch's Submission Agreement signed on: December 13, 1993 by John R. Cummings, First Vice President, Assistant General Counsel, Merrill Lynch, Pierce, Fenner & Smith, Inc.

Respondent Colletti's Submission Agreement signed on: January 4, 1994.

**HEARING INFORMATION**

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: June 22, 1994 for Two (2) sessions;  
June 23, 1994 for One (1) session.

Hearing Location: Southfield, Michigan.

### **CASE SUMMARY**

Claimant Sedlak alleged that Respondent Colletti, while employed by or acting as an agent for Respondent Merrill Lynch, churned her account and made speculative investments which were unsuitable for her given her personal and financial situation. Sedlak alleged that:

1. Sedlak met Colletti socially in 1988 and was persuaded to place her stock portfolio which she had inherited from her grandfather with Respondents in September 1988;
2. Respondents began churning her account in 1988 and continued until the account was closed in September 1990. The annualized turnover was clearly excessive;
3. Sedlak's account was a solid, blue-chip portfolio when Colletti received it in 1988. By September 1990, the portfolio was damaged through investments in high-risk options and extremely speculative stocks, which was unsuitable given Sedlak's personal and financial situation. Sedlak never understood the nature of the trades or of the margin account borrowing; and
4. Respondents actions reduced the value of the portfolio to 60% of its initial value within two years.

Respondents denied the material allegations of the Statement of Claim, alleging that:

1. Sedlak opened her account with Merrill Lynch in September 1987 with \$37,000.00 invested in certificates of deposit, Pepsico and Wal-Mart common stock, and a government securities mutual fund. She was young, single, had a substantial net worth and prior investment experience. In December 1987, she transferred her stock portfolio from her prior broker to Merrill Lynch;
2. On March 7, 1988, Sedlak opened her option account. In addition, Sedlak signed a second option agreement on September 17, 1988 seeking permission to engage in even more aggressive trading strategies. Sedlak received a copy of the agreement and a copy of "Characteristics and Risks of Standardized Options"; and
3. All trades were discussed and explained prior to execution. Sedlak received Trade Confirmations and was mailed a monthly Statement of Account detailing the trading in her account. Sedlak was in regular contact with Colletti.

### **RELIEF REQUESTED**

Claimant requested entry of an award against Respondents in the sum of \$70,000.00, representing sums for the return of commissions paid to Respondents during the period of the churning; compensation for the losses incurred because of the unsuitable investments; and interest on the lost principal.

Respondents requested that the Claimant's claims for damages be denied in all respects, and that the costs of this action, including attorneys' fees, be assessed against her.

### **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:

1. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief request not specifically granted is hereby denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Three (3) Hearing sessions x \$500.00 per session = \$1,500.00.

Forum fees are assessed against Claimant Susan Sedlak in the sum of \$750.00 and against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Peter L. Colletti in the sum of \$750.00.

The National Association of Securities Dealers, Inc. ("NASD") shall retain the \$150.00 non-refundable claim filing fee and the \$500.00 hearing session deposit previously deposited by the Claimant, Susan Sedlak. Claimant Susan Sedlak is liable for and shall pay to the NASD the

additional sum of \$250.00 as forum fees. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Peter L. Colletti are jointly and severally liable for and shall pay to the NASD the sum of \$750.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Richard G. Porter, Esq.

July 27, 1994

Richard G. Porter, Esq.

Public Arbitrator

Chairperson

/s/ Timothy J. Currier, Esq.

July 27, 1994

Timothy J. Currier, Esq.

Public Arbitrator

/s/ Bruce F. Coleman

July 27, 1994

Bruce F. Coleman

Industry Arbitrator

For NASD Use Only

Date of Decision: 8-1-94