

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

William K. Brewster II and Lexie Brewster

and

93-03724

Name of Respondents

Merrill Lynch, Pierce Fenner & Smith, Inc. and
Eddie Alexander

REPRESENTATION OF PARTIES

William K. Brewster II and Lexie Brewster ("Claimants") were represented by Michael G. O'Neill, Esq. and Patricia A. O'Meara, Esq. of O'Neill, Snell, Banowsky & McClure, Dallas, Texas.

Merrill Lynch, Pierce Fenner & Smith, Inc. and Eddie Alexander ("Respondents") were represented by Dennis M. Pape, Esq. of Merrill Lynch, Pierce Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about September 21, 1993. Submission Agreement of Claimants was signed on August 30, 1993.

Statement of Answer dated November 29, 1993 was filed by Respondents. Submission Agreement of Respondent Merrill Lynch, Pierce Fenner & Smith, Inc. was signed on November 29, 1993 by Dennis M. Pape. Submission Agreement of Respondent Eddie Alexander was signed on October 11, 1993.

HEARING INFORMATION

A pre-hearing conference was held on Friday, April 29, 1994 for one (1) session with James S. Raber, Esq. presiding.

The hearing was held on Wednesday, May 4, 1994 for two (2) sessions, Thursday, May 5, 1994 for two (2) session, Tuesday, May 17, 1994 for three (3) sessions and Thursday, May 19, 1994

for two (2) sessions in Dallas, Texas for a total of nine (9) hearing sessions and one (1) pre hearing session.

CASE SUMMARY

Claimant alleged that Respondents:

- * violated the standards of care normally applied in discretionary accounts by brokerage firms;
- * violated the duty which is imposed upon them by law and by their agreement with the clients to only recommend to the clients transactions which are suitable to the client's financial objectives and needs, and which the clients are capable of fully understanding;
- * violated their duty as fiduciaries to exercise a high standard of care, to be absolutely trustworthy, and to avoid seeking personal gain at the clients' expense;
- * violated state and federal securities laws and committed common law fraud, by fraudulently misrepresenting (or fraudulently failing to disclose) the riskiness of the transactions in the accounts; and
- * violated the Texas Deceptive Trade Practices Law by misrepresenting the services they were going to provide the Claimants.

Specifically, Claimants alleged that Mr Alexander exercised discretion in the management of the Claimants' accounts; engaged in churning; and entered into a series of unsuitable limited partnerships. With regard to Respondent Merrill, Claimants alleged that it failed to monitor their accounts in the manner appropriate for discretionary accounts and failed to prevent Mr. Alexander from harming them.

Respondents denied the allegations set forth in the Statement of Claim and stated that the Statement of Claim contained many misstatements of fact and half truths. Respondents stated that when Mr. Brewster advised Mr. Alexander that he wanted to do the same kind of trading as a friend of his, Alexander told Mr. Brewster the risks that the strategy would entail. Specifically, Respondents stated that Alexander went into great detail explaining the risk associated with the strategy, which included option trading. Respondents further stated that during their discussions, Mr. Brewster stated that he wanted to be more involved in the market and to aggressively trade for short term profits. Respondents also stated that Mr. Brewster advised Mr. Alexander that he and his wife had sufficient other assets than those that would be committed to these accounts. In 1990, Claimants expressed disappointment over the losses in their account and requested that another broker be assigned to their accounts to see if he could do better. During the discussion to change brokers, the Claimants did not express any complaint about Mr. Alexander. Finally, Respondents stated that the transactions were approved and ratified by the Claimants.

RELIEF REQUESTED

Claimants requested an award jointly and severally against Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. and Eddie Alexander in an amount to compensate them for the actual losses they have suffered, plus the actual attorney's fees (one third) which they have incurred in seeking the right this wrong. Claimants requested in the alternative, under the Deceptive Trade Practices Act, they should be awarded three times their actual losses, plus attorney's fees.

Respondents requested that the arbitrators dismiss in full the arbitration claims of William and Lexie Brewster and assess all costs against them.

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 original(s) remain on file with the N.A.S.D.

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 claims asserted against Respondent Merrill Lynch, Pierce Fenner & Smith, Inc. shall be and hereby are dismissed and denied in their entirety.
2. Respondent Eddie Alexander shall be and hereby is liable for and shall pay to the Claimants the sum of Ten thousand dollars (\$10,000).
3. Each party shall bear its own costs, expenses and fees (including attorney's fees) incurred in this matter not specifically enumerated herein.
4. Respondent Eddie Alexander shall be and hereby is liable for and shall pay to the Claimants the sum of Nine hundred fifty dollars (\$950) as reimbursement of filing and hearing session deposit fees previously paid to the NASD by the Claimants.
5. All other relief requested not specifically addressed above is denied.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were 9 sessions x \$750 = \$6,750 and 1 session x \$300 for a total of \$7,050 in forum fees. Pursuant to §43(b) 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 §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the N.A.S.D. by the Claimant. Respondent Eddie Alexander shall be and hereby is liable for and shall pay to the NASD the sum of \$6,300 as the balance due for forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ James S. Raber, Esq.

May 25, 1994

James S. Raber, Esq.

Public Arbitrator, Presiding Chair

s/ K. Steve Kimball

May 25, 1994

K. Steve Kimball

Public Arbitrator

s/ Michael L. Sain

May 26, 1994

Michael L. Sain

Industry Arbitrator