

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ted Cox

93-03905

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 28, 1993, Claimant Ted Cox, who appeared Pro Se, alleged that Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. neglected its obligations to inform him that the Altera stock, which he has purchased short, was increasing in value, until he had experienced a loss of \$7,000.00. The Claimant contended that had he been informed in midwinter, he would have covered the position then and would not have suffered the losses he has experienced; and that, therefore Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. should compensate him for the loss.

Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc., through its in-house counsel, Christopher Cavuoti, Esq., New York, NY, maintained that both it and its Registered Representative, Warren Overman, properly informed the Claimant regarding the price movement of Altera stock, and that prior to the trade at issue Claimant had profitably engaged in a short trading strategy. The Respondent further maintained that the Claimant was mailed account statements which reflected the price increase in Altera stock, and further that Mr. Overman made three pleas to Claimant to close his short position to limit his loss. Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. contended that all decisions to sell Altera stock and close his short position could only be made and were only made by Claimant Ted Cox, and therefore it cannot be held liable.

RELIEF REQUESTED

Claimant Ted Cox requested \$7,000.00 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, Libbe R. Murez, 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 September 15, 1993 and by the Respondent on December 28, 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. The claims of the Claimant Ted Cox against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. are dismissed in their entirety.
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.

AFFIRMATION

I, **LIBBE R. MUREZ, 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 19, 1994