

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Carl Richard Palazzolo

93-03932

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
William Lies, IV

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 27, 1993, Claimant Carl Richard Palazzolo, who appeared Pro Se, alleged that he purchased 300 shares of Intel, Inc. ("Intel") stock through Respondent William Lies IV ("Lies"), a broker at Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"). Claimant further alleged that on April 19, 1993, he instructed Respondents to sell 100 shares of his Intel stock, but the Respondents sold 200 shares. Claimant contended that on Respondent Lies' advice, he purchased 200 shares of Intel on April 23, 1993 to replace the 200 shares previously sold. Claimant contended that Respondent Lies gave him advice concerning the usefulness of tax losses, something Lies was not in a position to advise him about. Claimant contended that on May 13, 1993 Respondent Lies advised him to sell 100 shares of Intel stock, when on the same day Respondent Merrill Lynch raised its annual earnings estimate on the stock. Claimant further contended that since June 8, 1993, Respondent Lies has ignored his account and funds are sitting idle in his account. As a result of the above, Claimant alleged that he has suffered damages for which the Respondents should be held liable.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and William Lies, IV, through Respondent Merrill Lynch's in-house counsel Christopher D. Cavuoti, Esq., New York, New York, maintained that Claimant, upon opening his account with Respondents, informed Respondent Lies that he wished to speculate and was not adverse to taking risks. Respondents further maintained that Claimant's Intel

stock purchases were unsolicited recommendations made by Claimant. Respondents further maintained that there were no errors whatsoever made by Respondent Lies with instructions to sell Intel stock in April, 1993. Respondents denied that Respondent Lies provided Claimant with tax advice. Respondents contended that Claimant's assertion that Respondent Lies has refused to service his account since June, 1992 is baseless and without merit, as Respondent Lies has left numerous messages on Claimant's answering machine without receiving a return call. Respondents further contended that the basis of Claimant's alleged cause of action stems entirely from the fact that Intel's stock price continued to climb after Claimant decided to sell, and that such a claim can only be made with the benefit of hindsight and should not be viewed as giving rise to a cause of action. Respondents maintained that Claimant's calculation of claimed losses in his Statement of Claim are incorrect. In their response to Claimant's reply to their Statement of Answer, Respondents further contended that Claimant has had at least a 15 year business relationship with Respondent Merrill Lynch, and that Claimant is an experienced investor. As a result of the above, Respondents maintained that they should not be held liable in this matter.

#### **RELIEF REQUESTED**

Claimant Carl Richard Palazzolo requested \$3,359.40 in actual damages, or in the alternative a reinstatement of his Intel stock positions in his two accounts at his original cost.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and William Lies, IV requested that the Claimant's Statement of Claim be dismissed in its entirety, and that the costs of this proceeding be assessed against the Claimant.

#### **AWARD**

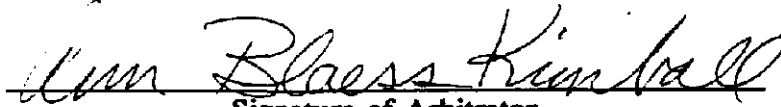
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Ann Blaess Kimball, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 21, 1993, by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on January 10, 1994, and by Respondent William Lies, IV on January 10, 1994.

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. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and William Lies, IV are jointly and severally liable and shall pay to Claimant Carl Richard Palazzolo \$3,359.40 in actual damages.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and William Lies, IV are jointly and severally liable and shall pay to Claimant Carl Richard Palazzolo \$125.00 as reimbursement of the filing fee.

**AFFIRMATION**

I, ANN BLAESS KIMBALL, ESQ., do hereby affirm upon my oath of 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: August 18, 1994