

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Patricia LaMendola
Mark C. LaMendola as Trustee for
the Mark LaMendola IRA

93-04121

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith Inc
Robert Edwards

REPRESENTATION

Claimants, Patricia LaMendola ("P. LaMendola") and Mark C. LaMendola as Trustee for the Mark LaMendola IRA ("LaMendola IRA") were represented by: Russell L. Forkey, Esq. of the law offices of Russell L. Forkey, Deerfield Beach, Florida.

Respondents, Merrill Lynch Pierce Fenner & Smith Inc. ("Merrill Lynch") and Robert Edwards ("Edwards") were represented by: Samuel A. Turvey, Esq. of Merrill Lynch, New York, New York.

CASE INFORMATION

Statement of Claim filed: October 6, 1993. Claimant's Submission Agreement signed on: September 27, 1993.

Statement of Answer filed by Respondents on: December 29, 1993. Respondents failed to sign Submission Agreements as required by Sections 12 and 25 of the NASD Code of Arbitration Procedure ("Code") (see "Other Issues").

HEARING INFORMATION

On October 13 and 14, 1994 in Tampa, Florida hearings lasting 3 sessions were held.

CASE SUMMARY

Claimants alleged that Respondents were liable for: fraud and deceit; negligence; breach of contract; breach of fiduciary duties; and, as it relates to Merrill Lynch, negligent supervision. Claimants alleged that Edwards made material misrepresentations relating to Cadnetix stock.

Respondents denied all allegations of wrongdoing and alleged that: Edwards made no misrepresentations; and, any losses suffered by Claimants were risks they knowingly assumed. Respondents asserted the affirmative defenses of: failure to allege claims upon which relief can be granted; statutes of limitations; estoppel; ratification; failure to exercise due diligence; contributory or comparative negligence; failure to mitigate damages; the acts complained of do not contribute to any losses allegedly suffered by Claimants.

RELIEF REQUESTED

Claimants requested: damages in the amount of \$9,644.15 plus interest for P. LaMendola; damages in the amount of \$57,084.64 plus interest for the LaMendola IRA; plus attorneys fees, costs and such other relief as the panel may deem just and proper.

Respondents requested: dismissal of the Claim plus costs and expenses.

OTHER ISSUES CONSIDERED & DECIDED

1. 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 NASD.

2. Respondents were required to sign Submission Agreements pursuant to Sections 12 and 25 of the Code, Merrill Lynch being a member firm, and Edwards being a person associated with a member firm, at the time the facts giving rise to the controversy occurred.

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. Respondents are found not liable and therefore, all claims against them are hereby dismissed.

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2. Claimants' request for costs and attorney's fees is denied.
3. Respondents' request for costs and expenses is denied.

OTHER COSTS

None

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have assessed forum fees in the amount of \$1,500.00 (3 sessions x \$500.00 per session).

1. Claimants are hereby assessed, jointly and severally, forum fees in the amount of \$750.00 for which the NASD shall retain the \$500.00 previously paid by Claimants in partial satisfaction of such fees leaving a balance due the NASD of \$250.00.
2. Respondents are hereby assessed, jointly and severally, forum fees in the amount of \$750.00 payable directly to the NASD.
3. The NASD shall retain the \$150.00 nonrefundable filing fee previously paid by Claimant.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
Thomas E. Greef

Public/Chairman

/s/
John W. Platt

Industry

/s/
Patricia S. Plant, M.A.

Public

Date of Decision: 11/28/94