

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Edward R. Feuerstein

93-04136

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
John H. Wellington

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 7, 1993, Claimant Edward R. Feuerstein, who appeared Pro Se, alleged that in November, 1991, he wanted to purchase a long term A-rated bond if there was one available yielding more than six percent. Claimant further alleged that Respondent John H. Wellington ("Wellington"), a broker at Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), represented to him that none were available, and then persuaded him to buy 1667 shares of the Blackrock (formerly Blackstone) North American Government Income Trust ("Blackstone"), of which Respondent Merrill Lynch was one of the underwriters. Claimant contended that Respondent Wellington represented to him that the price of Blackstone would not fluctuate by more than a point over the first couple of years. Claimant further contended that the price of Blackstone declined three points within a year of his purchase. Claimant alleged that there were several long term A-rated bonds available in 1991 which yielded more than six percent. As a result of the above, Claimant contended that he has suffered damages for which the Respondents should be held liable.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and John H. Wellington, through Respondent Merrill Lynch's in-house counsel Christopher D. Cavuoti, Esq., New York, New York, maintained that Claimant never asked Respondent Wellington if there were any long term bonds available yielding more than six percent. Respondents further maintained that Respondent Wellington

contacted Claimant to recommend Blackstone as an investment consistent with his investment objectives, since it was a closed end fund which trades on the New York Stock Exchange and had an anticipated yield of 8.75 to 9.00 percent at the time of offering. Respondents contended that Claimant, at a later date, inquired of Respondents if there were any bonds available that had a yield similar to that of Blackstone. Respondents maintained that Respondent Wellington advised Claimant that there were no investment grade bonds with such a yield. Respondents further maintained that Respondent Wellington did not make any guarantees regarding the performance of Blackstone to Claimant, and that the risks associated with Blackstone were explained to Claimant as well as disclosed in the prospectus received by Claimant. As a result of the above, Respondents contended that they should not be held liable in this matter.

RELIEF REQUESTED

Claimant Edward R. Feuerstein requested \$5,000.00 in actual damages.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and John H. Wellington requested that the Claimant's Statement of Claim be dismissed in its entirety, and that the cost of this proceeding be assessed against Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Ronald Thomas Spann, 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 October 2, 1993, by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on February 18, 1994, and by Respondent John H. Wellington on February 3, 1994.

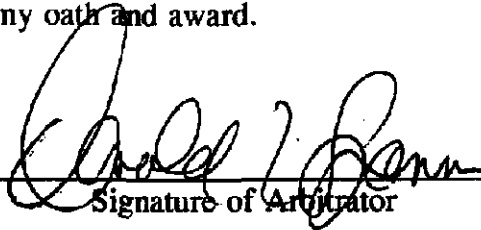
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and John H. Wellington are jointly and severally liable and shall pay to Claimant Edward R. Feuerstein \$1,511.00 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 John H. Wellington are jointly and severally liable and shall pay to Claimant Edward R. Feuerstein \$62.50 as partial reimbursement of the filing fee.

AFFIRMATION

I, RONALD THOMAS SPANN, 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: July 18, 1994