

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Judith K. Marshman

93-04316

Name of Respondent

Merrill Lynch, Pierce Fenner & Smith

REPRESENTATION OF PARTIES

Claimant, Judith Marshman ("Marshman") was represented at the hearing by Paul J. Peralta, Esq. of Baker & Daniels, .

Respondent Merrill Lynch, Pierce Fenner & Smith ("Merrill Lynch") was represented at the hearing by David L. Lee, Esq. of the Law Offices of David L. Lee, Chicago, Illinois.

CASE INFORMATION

Statement of Claim was filed on October 18, 1993. Claimants' Submission Agreement was signed on October 4, 1993.

Statement of Answer was filed by Respondent on January 31, 1994. Respondent's Submission Agreement was signed on January 26, 1994.

HEARING INFORMATION

The hearing was held on September 21, 1994 for one (1) session and on October 20, 1994 for two (2) sessions in Chicago, Illinois for a total of three (3) hearing sessions.

CASE SUMMARY

Claimant Marshman alleged that Merrill Lynch recommended and purchased speculative and unsuitable investments in options for her account, such as XMZ puts, GE puts, Merck puts, and IBM puts. Marshman also alleged that Merrill Lynch charged excessive and inappropriate margin interest, and churned her account.

Respondent Merrill Lynch denied any allegations of wrongdoing. Merrill Lynch stated in their answer that they suggested option transactions since Marshman advised them that she was having difficulty in living within the income generated by her

investments. Merrill Lynch also stated that they suggested using margin to increase her positions since Marshman repeatedly urged for higher income from her account. Merrill Lynch stated that they explained how options and margin worked and that she authorized them to engage in such transactions in her account.

RELIEF REQUESTED

Claimant requested approximately \$66,952.97 in losses on inappropriate option investments, approximately \$5430.96 lost in margin interest, approximately \$7000 in lost opportunity costs, commissions, \$250,000.00 in punitive damages, reasonable attorney's fees and costs of the arbitration.

Respondent requested that the Statement of Claim be dismissed and that costs be assessed against the Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed by 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 originals remain on file with the NASD.

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. Respondent, Merrill Lynch shall be and hereby is liable for, and shall pay to the Claimant, Marshman, compensatory damages in the amount of Fifty Two Thousand, Eight Hundred Thirty Six Dollars and Sixty Three Cents (\$52,836.63);
2. Claimant's request for punitive damages is denied;
3. Claimant's request for attorney's fees is denied;
4. Each of the parties shall bear their own costs and expenses other than those specifically enumerated for herein.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

3 hearing sessions x \$750 = \$2250 minus \$750 hearing session deposit = net \$1500 due to the NASD.

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Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$200, and shall retain the hearing session deposit in the amount of \$750 previously paid to the NASD by Claimant.

Additional Forum Fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

12/22/94

s/s Arthur M. Holtzman
Arthur M. Holtzman, Esq.
Presiding, Public Arbitrator

12/22/94

s/s Roger B. Johnston
Roger B. Johnston
Public Arbitrator

12/22/94

s/s Gregg Rzepczynski
Gregg Rzepczynski, Esq.
Industry Arbitrator

Date Award Served By The NASD: 12/22/94