

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Patsy J. Bischoff

93-04393

Name of Respondents

Merrill Lynch, Pierce Fenner & Smith, Inc.;
Donald Zandstra

REPRESENTATION

For Claimant: Patsy J. Bischoff ("Bischoff") was represented by Alan D. Penskar, Esq. of Smith, Harris & Goyette, located in Flint, Michigan.

For Respondents: Merrill Lynch, Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Donald Zandstra ("Zandstra") was represented by Clarence L. Pozza, Jr., Esq. of Miller, Canfield, Paddock and Stone, located in Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed: October 25, 1993.

Claimant's Submission Agreement signed on: October 15, 1993.

Statement of Answer filed by Respondents on: March 16, 1994.

Respondent Merrill Lynch's Submission Agreement signed on: March 16, 1994 by John R. Cummings, Merrill Lynch, Pierce Fenner & Smith, Inc.

Respondent Zandstra's Submission Agreement signed on: February 22, 1994.

HEARING INFORMATION

Pre-Hearing Conference: November 7, 1994 before One (1) arbitrator.

Hearing Dates/Sessions: September 26, 1995 for Two (2) sessions;
October 9, 1995 for Two (2) sessions.

Hearing Location: Southfield, Michigan

CASE SUMMARY

Claimant Bischoff alleged that Respondent Zandstra, while employed by or acting as an agent for Respondent Merrill Lynch, advised Bischoff and her ex-husband that a transfer of the funds from her ex-husband's IRA account to an IRA account set up for her would be tax-free despite the Bischoffs' divorce. Upon the death of Ms. Bischoff's ex-husband, the funds were transferred to her account. Shortly thereafter, Bischoff was advised that the transfer would be treated as income, increasing her state and federal tax liability. Bischoff was forced to liquidate her account to pay the additional taxes. Based upon the above allegations, Bischoff asserted claims for negligence.

Respondents denied the material allegations of the Statement of Claim, alleging that the Bischoffs received all information regarding how the distributions would be made at the time of Dr. Bischoff's death. In addition, Respondents did not provide any tax advice or information.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents, jointly and severally, for the amount of \$45,676.67; an additional amount equal to the lost tax-deferred benefit and the lost earnings on the investments liquidated to pay the taxes; pre- and post-judgment interest, actual attorneys' fees and all costs of arbitration; and such other relief as the panel deems appropriate.

Respondents requested that the claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

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 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, Pierce Fenner & Smith, Inc. is liable for and shall pay to Claimant Patsy J. Bischoff the sum of \$35,000.00 as actual damages;
2. The claims against Respondent Donald Zandstra are dismissed with prejudice;
3. The parties shall bear their own costs of arbitration, including attorneys' fees,

except for those specifically enumerated herein;

4. Any relief not specifically awarded is hereby denied.

OTHER COSTS

The NASD shall retain the \$400.00 postponement fee previously paid by the Respondents, Merrill Lynch, Pierce Fenner & Smith, Inc. and Donald Zandstra for postponement of the hearing scheduled for September 28, 1994. In addition, the NASD shall retain the sum of \$130.00 credited to Claimant Patsy J. Bischoff for the postponement of the hearing scheduled for June 20, 1995. Claimant Patsy J. Bischoff is liable for and shall pay to the NASD the sum of \$230.00 as the balance of the postponement fee due.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing conference x \$300.00 = \$300.00; Four (4) Hearing sessions x \$400.00 per session = \$1,600.00; Total Forum Fees = \$1,900.00.

The National Association of Securities Dealers, Inc. shall retain the \$120.00 claim filing fee and the \$400.00 hearing session deposit previously deposited by the Claimant, Patsy J. Bischoff. Respondent Merrill Lynch, Pierce Fenner & Smith, Inc. is liable for and shall pay to the NASD the sum of \$1,500.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures
Name

Date

/s/ Robert J. Scafuri, Esq.
Robert J. Scafuri, Esq.
Public Arbitrator
Chairperson

November 20, 1995

/s/ Norman Bristol, Esq.
Norman Bristol, Esq.
Public Arbitrator

November 28, 1995

/s/ Robert A. Vogler
Robert A. Vogler
Industry Arbitrator

November 20, 1995

For NASD Use Only/Date of Decision: November 29, 1995