

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Al A. Simmons & Vincent A. Dagys

93-04905

Name of Respondents

Merrill Lynch, Pierce Fenner & Smith Inc.,
Jon M. Fletcher

REPRESENTATION

Claimants Al A. Simmons ("Simmons") and Vincent A. Dagys ("Dagys") were represented at the hearing by Kenneth F. Berg, Esq. of Chicago, Illinois.

Respondents Merrill Lynch, Pierce Fenner & Smith, Inc. ("Merrill Lynch") and Jon M. Fletcher ("Fletcher") were represented by Jonathan A. Schorr, Esq. of Merrill Lynch, Pierce Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on November 29, 1993. Claimant Simmons signed a Submission Agreement on November 12, 1993. Claimant Dagys filed a Submission Agreement on March 17, 1994.

A Joint Statement of Answer was filed by Respondents on February 23, 1994. Respondent Merrill Lynch signed a Submission Agreement on February 22, 1994. Respondent Fletcher signed a Submission Agreement on January 11, 1994.

HEARING INFORMATION

The hearing was held on November 10, 1994 for two sessions, in Chicago, Illinois.

CASE SUMMARY

Claimants Simmons and Dagys alleged that Respondents Merrill Lynch and Fletcher made unsuitable recommendations, violated Section 10(b) of the Securities Exchange Act of 1934, and

committed common law fraud regarding an investment account Simmons held at Merrill Lynch. The account, purchased around September 20, 1990, contained 1,000 shares of Unisys 3.75 Series A Convertible Preferred Stock. Simmons and Dagys charged that Fletcher rejected available information that the stock would increase in value and recommended to them that they sell the investment, which Simmons did.

Respondents Merrill Lynch and Fletcher denied each and every allegation of wrongdoing contained in the Statement of Claim. Merrill Lynch and Fletcher also alleged the following affirmative defenses: Failure to state a claim upon which relief may be granted; ratification; estoppel; statute of limitations; and failure to mitigate all alleged damages.

RELIEF REQUESTED

Claimants requested damages in the amount of \$10,660.00, plus legal fees and costs. In the alternative, Claimants requested rescission in the following form: Claimants will return to Merrill Lynch the \$32,742.27 they received on the sale of the stock, plus interest, and in exchange Merrill Lynch will return 1,000 shares of Unisys preferred stock to their account, along with \$5,160.00 in deferred dividend payments and dividend payments made between September, 1992 and September, 1993 (approximately \$3,750), as well as legal fees and costs.

Respondents requested that the Statement of Claim be dismissed in its entirety, and that Claimants be liable to Respondents for legal fees and costs.

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. The Claimants' Statement of Claim is denied in its entirety and the Respondents Merrill Lynch and Jon Fletcher are hereby dismissed;
2. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees, other than those specifically enumerated for herein.
3. Any relief not specifically provided for herein has been denied by the panel.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$100.00 and shall retain the hearing session deposit in the amount of \$400.00 previously deposited with the N.A.S.D. by the Claimants.

Forum Fees are calculated at the rate of \$400.00 per hearing session x two sessions = \$800.00 minus the hearing session deposit of \$400 = net \$400 due to the NASD.

The Panel has ordered that the additional Forum Fees in the amount of \$400.00 shall be paid by Respondents Merrill Lynch and Jon Fletcher jointly and severally.

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

By The Arbitration Panel:

Name

Date

s/s John W. Jerak
John W. Jerak, Esq.
Presiding, Public Arbitrator

12/8/94

s/s Andrew B. David
Andrew B. David, Esq.
Public Arbitrator

12/20/94

s/s Scott M. Krantz
Scott M. Krantz
Industry Arbitrator

12/12/94

Date Award Served By The NASD: 12/21/94.